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SUPREME COURT OF THE UNITED STATES.

No. 53.

PIERRE CHOUTEAU, SENIOR, APPELLANT,

VERSUS

MARGUERITE, (A WOMAN OF COLOR) APPELLEE.

ERROR TO SUPREME COURT, THIRD JUDICIAL DISTRICT OF THE STATE OF MISSOURI.

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STATE OF MISSOURI—*Third Judicial District, sct.*

Be it remembered, that heretofore to wit, on the twenty-ninth day of April, in the year of our Lord eighteen hundred and thirty-seven, there was filed in the office of the clerk of the supreme court of the state of Missouri, within and for the third judicial district, a transcript of the record and proceedings of the circuit court of Jefferson county, in the case of Margueritte, a woman of color, against Pierre Chouteau, senior, in the words and figures following to wit:

TRANSCRIPT FROM JEFFERSON COUNTY.

STATE OF MISSOURI—*County of Jefferson, ss.*

Be it remembered, that heretofore, to wit, at the November term of the circuit court, for the county of Jefferson aforesaid, in the year eighteen hundred and thirty-five, were filed in the office of the said circuit court, the following transcript and original papers, to wit:

STATE OF MISSOURI—*County of St. Louis, ss.*

Be it remembered, that heretofore, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and twenty-five, Margueritte, a free woman of color, by her attorney, filed in the office of the clerk of the circuit court, for the county of St. Louis, and State of Missouri, her declaration against Pierre Chouteau, senior, in the words and figures following, to wit:

DECLARATION.

Margueritte, a free woman of color, who is permitted by the court to sue by her next friend, Pierre Barribeau, as a poor person, for her freedom by her attorneys, Farris, Gamble and McGirk, assigned as counsel by the court, complains of Pierre Chouteau, senior, of a plea of trespass; for that the said Pierre, heretofore, to wit, on the first day of January, in the year of our Lord eighteen hundred and twenty-five, with force and arms, at the county of St. Louis, unlawfully, an assault did make in and upon the body of the said Margueritte, and then and there beat, bruised, and ill-treated her, the said Margueritte, and then and there imprisoned her, the said Margueritte, and kept and detained her in prison without any reasonable or probable cause, whatsoever, against her will, and has ever since kept and detained her in prison, and still keeps and detains her in prison against the will of her, the said Margueritte, and contrary to the law of this State; and other wrongs to the said Margueritte, then and there did, against the peace of the State; wherefore the said Margueritte says that she is

greatly injured, and hath sustained damage to the amount of five hundred dollars, and therefore she brings her suit, &c.

FARRIS, GAMBLE, & McGIRK,
Attorneys for plaintiff.

Whereupon the clerk of said circuit court issued the following writ, to wit:

WRIT.

COUNTY OF ST. LOUIS. *ss.*

The State of Missouri to the sheriff of said county, greeting:

We command you to summon Pierre Chouteau, senior, that he be and appear before the judge of our circuit court, at the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the fourth Monday of July next, then and there to answer unto Margueritte, a free woman of color, who is permitted by the court to sue by Pierre Barribeau, her next friend, as a poor person, of a plea of trespass to the damage of said plaintiff of five hundred dollars, and have you then there this writ.

[L. S.] Witness, Archibald Gamble, clerk of our said court, at office, this second day of June, 1825.

ARCHIBALD GAMBLE,
Clerk.

Which said writ was duly returned by the sheriff aforesaid, endorsed in the words and figures following, to wit:

SHERIFF'S RETURN.

Executed this writ on Pierre Chouteau, senior, June 14th, 1825, in the city of St. Louis, by giving the writ and declaration to him to read, and his acknowledging the service thereof.

JOHN K. WALKER,
Sheriff.
By JNO. SIMONDS, JR.
Deputy Sheriff.

And afterwards, to wit, at the July term of said circuit court, in the year aforesaid, comes the said Pierre Chouteau, senior, by his attorney, and files his plea in the words and figures following, to wit:

PLEAS.

And the said Pierre Chouteau, by his attorney, comes and defends the force and injury when, &c. and says, as to the assaulting, beating, bruising, ill-treating, and imprisoning the said Margueritte, as in said declaration mentioned, that she the said Margueritte, ought not

to have, or maintain, her aforesaid action thereof against him, because he says that before, and at the time when, &c. in said declaration mentioned, to wit, at St. Louis aforesaid, the said Margueritte was a slave in the lawful possession and service of said Pierre Chouteau, wherefore the said Pierre Chouteau then and there detained, and still doth detain, said Margueritte in his service and possession, which detention and possession is the assaulting, beating, ill-treating, and imprisoning, the said Margueritte, in said declaration mentioned, and the said Pierre Chouteau is ready to verify; wherefore he prays judgment if the said Margueritte ought to have or maintain her aforesaid action against him.

LAWLESS & COZZENS,
Attorneys for defendant.

And thereupon, at the same term of the said circuit court, the plaintiff, by her attorneys, files her demurrer to said plea, in the words following to wit:

DEMURRER TO PLEA.

And the said plaintiff says that the plea of the said defendant, and the matters and things therein contained, in manner and form as the same are therein stated and set forth, are not good and sufficient in law to bar or preclude the said plaintiff, from having and maintaining her aforesaid action thereof against the said defendant, and that the said plaintiff is not bound by the laws of the land to answer the same, and this the said plaintiff is ready to verify; wherefore, for the want of a sufficient plea in this behalf, the said plaintiff prays judgment, &c.

McGIRK & FERRIS,
For plaintiff.

Whereupon, on motion of the attorney for the defendant, leave is given by the court to plead the general issue; thereupon, to wit, at the same term of the said circuit court, the said Pierre Chouteau, by his attorney, filed the following plea:

PLEA NOT GUILTY—ISSUE.

And the said defendants come and defend the force and injury when, &c. and say that they are not guilty of the said several supposed trespasses, or any of them, in manner and form, as the said Margueritte hath above thereof complained against them, &c.

COZENS,
For defendant.

And the said Margueritte doth the like, &c.

GAMBLE, McGIRK & FARRIS,
Attorneys for plaintiff.

And afterwards, to wit, in vacation, before the November term of

said court, in the year aforesaid, the said Marguerite, by her attorneys, files her replication in the words and figures following, to wit:

REPLICATION.

And the said Marguerite, by her attorneys, as to the said plea of the said Pierre, Chouteau, sr. by him first above pleaded as to the said several trespasses, in the introductory part of that plea mentioned, and therein attempted to be justified, saith, that she, the said Marguerite, by reason of any thing by the said Pierre in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof, against him the said Pierre, because she saith, that she, the said Marguerite, was not at the time of the committing of the said several trespasses by him, the said Pierre Chouteau, in her said declaration above set forth, nor is she now a slave, as the said Pierre in his said plea hath above alleged, but that she, the said Marguerite, was at the time of the committing of the said several trespasses by the said Pierre, in her said declaration above set forth, and is now a free person by and according to the usages, customs, and laws of the land, and ought not to be held and detained as a slave in the possession and service of the said Pierre, nor of any other person by or under whom the said Pierre may claim; and this she, the said Marguerite, prays may be inquired of by the country.

GAMBLE, McGIRK & FARRIS,
Attorneys for plaintiff.

CONTINUANCE.

This cause was continued from term to term, until the November term of said circuit court, in the year of our Lord one thousand eight hundred and twenty-six, at which said term is the following entry, to wit:

JURY—VERDICT.

Now at this day, come the parties aforesaid by their respective attorneys aforesaid; and thereupon also came to a jury, to wit, Thomas Estes, Jacob Hawkins, Hezekiah C. Simmons, William Higgins, James C. Sutton, Michael Reily, Thomas B. Stevens, Wilson A. Bell, Willam G. McCullough, Caleb Jones, John D. Dauberman, and Phineas Bartlett; twelve good and lawful men, who being duly elected, tried, and sworn, well and truly to try the issues within joined between the parties aforesaid, upon their oaths aforesaid, do say, as to the first issue within joined between the parties aforesaid, that the said defendant is guilty of the said several trespasses, in manner and form as the said Marguerite hath above thereof complained against him; and as to the second issue within joined, between the parties aforesaid, the jury aforesaid upon their oath aforesaid, do say that the said Marguerite was not at the time of the committing the said several trespasses by him, the said Pierre, in her said declaration set

forth, nor is she now a slave, as said Pierre in his said plea hath above alleged, but that she, the said Marguerite, was at the time of the committing of the said several trespasses, by the said Pierre, in her said declaration set forth,and now is a free person, by and according to the usages, and customs, and laws of the land, and ought not to be held and detained as a slave in the possession and service of the said Pierre, nor any other person by or under whom the said Pierre may claim; and they assess the damages of the said plaintiff, by her sustained, by reason of the said trespass in the declaration mentioned, to the sum of six and one fourth cents.

MOTION FOR NEW TRIAL.

And afterwards, to wit, at the said term of the said circuit court, on motion of the attorney for the defendant, it is ordered by the court that the verdict in this case be set aside, and a new trial granted, on condition of the payment of the costs of this term.

NEW TRIAL GRANTED—VERDICT—JUDGMENT.

And afterwards, to wit, at the March term of said circuit court, in the year of our Lord one thousand eight hundred and twenty-seven, come the parties aforesaid, by their respective attorneys aforesaid; and thereupon, also, come a jury, to wit, John Long, James Walton, Absalom Link, Thomas M. Clark, George Little, Robert Quarles, jr. James S. Douglas, Joseph Walton, Benjamin Ferry, Mark Sappington, Tyre Wells, and James Keepers; twelve good and lawful men, who being duly elected, tried, and sworn, well and truly to try the issue within joined between the parties aforesaid, upon their oath aforesaid, do say that the said Pierre Chouteau, senr. is not guilty of the said several trespasses, or any of them, in manner and form, as the said Marguerite hath above thereof complained against him; therefore it is considered that the said Marguerite take nothing by her said writ, and that the said Pierre Chouteau, senior, go thereof without day.

And thereupon the said plaintiff, by her attorneys, files her bill of exceptions in the words and figures following, to wit:

BILL OF EXCEPTIONS.

Be it remembered, that on the trial of this cause, the plaintiff produced and offered to read in evidence to the jury sitting on the trial of said cause, the following deposition of Marie Louise Chauvin, to wit:

DEPOSITION OF MADAME CHAUVIN.

Be it remembered, that on this twenty-sixth day of November, 1825, between the hours of eight o'clock, A. M. and six o'clock, P. M. at

the house of Lefreniere Chauvin, in the county of St. Louis, in pursuance of the annexed notice, came Madame Marie Louise Chauvin, of lawful age, who being duly sworn to testify the whole truth in a certain action now pending in the circuit court of the county of St. Louis, between Marguerite, a free woman of color, plaintiff, and Pierre Chouteau, senior, defendant, upon her oath saith—she is acquainted with Marguerite, the plaintiff in the present action, who lives with Pierre Chouteau, who she believes was born in the year 1778. She saith she was acquainted with the mother of the said Marguerite, whose name was Marie Jean, and was sometimes called Marie Scipion, who belonged to and lived with the father of the deponent, Joseph Tayon. Said Marie after the death of Madam Tayon, lived at Mr. Chouteau's, where Joseph Tayon lived until his death. After the death of Madame Tayon, Marie Scipion lived with Mr. Chouteau several years, until she was taken sick, when she came to the house of this deponent, where she died. She was at the time of her death about sixty years of age, as well as this deponent recollects. This deponent saith that Joseph Tayon, after the death of his wife, lived with Mr. Pierre Chouteau, where he died. Marie Scipion died in June, 1802. In January, 1801, this deponent sent for the said Marie Scipion to Mr. Pierre Chouteau's where she was sick, and in June, in the year following, she died; remaining with this deponent more than a year. The said Marie Scipion was in the possession of this deponent's father from the time of his marriage until she was removed from Mr. Chouteau's to the house of this deponent, and this deponent has always understood she came to her father by his marriage. This deponent knows Cateche and Celeste, children of the said Marie Scipion, the said Cateche is now in the possession of Mr. Pierre Chouteau, and Celeste is a part of the estate of Madame Helen Chevalier. Mr. Chouteau claims the said Cateche by virtue of a sale from this deponent, but when this deponent sold her pretensions to the said Chouteau, she knows not whether her husband signed the articles of sale. This deponent raised this said Cateche from a year old, and she was about forty years old when this deponent sold her to Mr. Chouteau. During this time Mr. Chouteau obtained possession of the said Cateche, and kept possession about ten years, and this deponent regained possession about a year before she sold her pretensions. This sale was some where about eight or ten years since. The said Cateche was a gift from this deponent's parents to this deponent. Madame Chevalier raised Celeste, from her birth, at which time she was given to her by Joseph Tayon and wife, who were the father and mother of the said Madame Chevalier. The said Celeste was in the continued possession of the said Madame Chevalier until she was taken therefrom by Mr. Chouteau, about the same time he took Cateche from the possession of this deponent. This deponent knows not under what title the said Chouteau claimed the said Catiche and Celeste; unless it was as the administrator or one of the heirs of the said Joseph Tayon. This deponent has heard from her father and mother that the said Marie Scipion was bought by this deponent's grand mother of Madame Erve, and given by her to the mother of

this deponent. This deponent has heard from her mother and father that the said Marie Scipion was, on the mother's side, an Indian, and this deponent knew a negro man who was generally said and believed to be the father of the said Marie Scipion—his name was Scipion. The last this deponent knew of this negro man, his master took him to New Orleans. This deponent has generally understood that the mother of the said Marie Scipion was an Indian, captured by the French *near Natchez*, and brought to Fort Chartres, where she was sold as a slave, and this she has heard as well from her father and mother as from others. This deponent knew Marie Tata, the sister of Marie Scipion, who had every appearance of being a full blooded Indian; she was a slave when this deponent first knew her, but was afterwards owned by a Frenchman and set at liberty, he having lived with her as a wife, and had children. The father of this deponent had an Indian woman named Marie Louise, who had two male children, Acken and Julien, who ran away and passed for free men, at the commencement of the Spanish government, and went to Orleans, where one of them married a white woman. They went away after the publication of an ordinance by O'Reily, the Spanish governor of Louisiana, declaring all the Indian slaves then in the province of Louisiana, free on the death of their masters, and those born after the publication, free at their birth—prohibiting any sales by the persons then in possession of any such slaves. This deponent read the ordinance to her father and conversed with him on the risk he ran of losing his Indian slaves, and remembers that he sold one of these slaves and was compelled to take it back and hush it up lest he should be fined under the ordinance. This ordinance was posted up at the church door and in hand bills in St. Louis, where this deponent then lived, which was before her marriage, but the exact time she does not now recollect. This deponent remembers that her father has often said after the publication of this ordinance, that Marie Scipion and her children would be free at his death, in consequence of that ordinance. MARIE LOUISE CHAUVIN.

OBJECTION TO PART.

And the counsel, on the part of the defendant, objected to the reading of that part of the said deposition which relates to the publication and contents of the proclamation of O'Reily, the Spanish governor of Louisiana, on the ground of the incompetency thereof.

SUSTAINED—REMAINDER READ.

And the court sustained said objection and prohibited said plaintiff from reading that part of said deposition in evidence to the jury, but permitted the balance or remaining part of said deposition to be read, which was accordingly done.

DEPOSITION OF J. B. RIVIERRE DIT BACANNE.

The plaintiff then produced and offered to read in evidence to the jury the following deposition of John B. Rivierre alias Baccannie, to wit:

Personally came before me, the undersigned, a justice of the peace within and for the county and State aforesaid, at my office in the village of Floreisant *alias* St. Ferdinand, in the county aforesaid, John B. Rivierre alias Baccannie, a free white person, of lawful age, who being by me first sworn upon his corporal oath to testify the whole truth touching his knowledge concerning the matters in controversy in the above mentioned suit, wherein Margurite, a woman of color, is plaintiff and Pierre Chouteau is defendant, deposeth and saith: That he knew Joseph Tayon, senior, formerly a resident of the town of St. Louis and Louise Tayon, his wife, in their lifetime; that they have both been dead for many years, and that the said Tayon and wife, were the father and mother of Madame Chauvin, Madame Helen Chevalier, and John and Francis Tayon and Charles Tayon—that he first became acquainted with said Tayon and wife at Fort du Chartres, in Illinois, from his earliest recollection, and that he was acquainted with them afterwards and until their deaths; and that this deponent was intimate in the family of said Joseph Tayon, and was very often at the house and in the family of said Joseph Tayon, as well at Fort Chartres as at St. Louis, and that his intimacy and intercourse with said Tayon and family, rendered the house of said Tayon almost as familiar to this deponent as his own house. That this deponent was perfectly well acquainted with all the members of said Tayon's family, his domestic servants, slaves and dependants, as well as the other members of the family; that this deponent knew a mulatto woman who lived in the family of said Tayon, whose name was Marie Scipion; that her complexion was that of a dark red Indian cast, partaking of the complexion of negro and Indian; that he thinks the said Marie Scipion was about eighteen or twenty years of age when he first saw her at Fort Chartres, and that this deponent knew Marie Scipion ever after till the time of her death; that the hair of the head of said Marie Scipion was about one foot in length, and curled a good deal, but not so much curled as the hair of an African negro, and that he has seen the hair of mulattoes more curled than the hair of said Marie Scipion; that said Marie Scipion generally wore a handkerchief on her head after the fashion of the French, but that he has also seen her without any covering on her head except her hair. That Marie Scipion had several children, one named Lourie, which he believes was a nick name, who was a girl, and now lives with Pierre Chouteau, senior, in the town of St. Louis, and that Marie *Say*-pion had several other children, whose names he does not know; and this deponent further saith that he was well acquainted with an Indian woman who always exercised her personal freedom without the restraint of any person, as far as this deponent knows and believes, and who was a perfect Indian in appearance, and was universally allowed

to be of the Natchez tribe, who had adopted the French mode of life and their manners and habits, and lived at Prairie du Rouche with a half breed man called Basques, and that her name was generally called Marie Tata; and this deponent further says, that he has often heard his deceased father, Antoine Rivierre, say that the said Marie Tata was the sister of the mother of Marie *Say*pion, whose name he does not recollect to have heard, and that what his father said was confirmed by common opinion and report of other people generally, who knew the said Marie Tata and the said *Say*pion; and further this deponent saith that he has often heard his deceased father often say, that he was well acquainted with the mother of the said Marie *Say*pion, who was an Indian woman of the Natchez tribe of Indians, and that the mother of the said Marie *Say*pion was the sister of Marie Tata. That this deponent recollects of having heard it said, when this deponent was a boy, by other people in their jokes, that this deponent's father was *very intimate* with Marie Tata and had sometimes played the part of her beau. And this deponent further saith that he has often heard his deceased father say, and other persons in general, as well as Joseph Tayon, senior, and his family say, that the father of said Marie *Say*pion, was a negro man, and that his name was *Say*pion also, and that the said *Say*pion was drowned or smothered in the bottom of a well at Prairie du Rocher, which caved in upon him whilst he was cleaning it out, where his body remained; and that this deponent has often heard Joseph Tayon, senior, say the same things, as well as many other persons. And this deponent further saith, that he recollects to have formerly seen a half Indian woman at the house and in the family of the said Joseph Tayon, senior, whose name was called Marie Louise; and this deponent recollects to have heard the said Tayon say that the said Marie Louise was a half Indian woman; that the said Tayon gave this deponent to understand that the said Marie *Say*pion and Marie Louise were given to the wife of said Tayon, by a cousin to his wife, whose name was Garguion or Guyon, who was a priest at Fort du Chartres and Prairie du Rocher; and that this deponent understood the said Tayon and his wife both to say that the said Marie *Say*pion and Marie Louise were given to the said Tayon's wife by the said Garguion or Guyon, upon the condition that the said Marie *Say*pion and Marie Louise and all their children should be set at liberty from servitude when ever the said Tayon and wife should both be dead. And further, that this deponent has heard the said Tayon and wife both say several times that the said Marie Saypion and Marie Louise and their children were all to be free at their death, and should serve nobody afterwards—because such was the condition on which they were given to them by the said Garguion or Guyon. And this deponent further says, that many years ago, fifty or more, that a proclamation was promulgated and published in St. Louis by authority of the Spanish Governor, then in office at Orleans, and during the time that Pierre Ignate was Lieutenant Governor or com mandant at the post of St. Louis, by hand bills at the church door, which this deponent heard read, being unable to read it himself, whereby it was declared that all the Indians and the descendants of

Indians, who were or had been held in slavery by the French and Spaniards, whether taken in war, purchased of the Indians, and all those who should thereafter be taken by the inhabitants of Louisiana in war, or in any way, should be purchased by the inhabitants from the Indians, were, and should be free, and discharged from servitude as slaves, and be allowed to remain in the settlements if they chose, or to depart to their own country. At what precise time this proclamation was made, this deponent cannot now remember, but this deponent is positively certain that such proclamation was made, and also, that he then heard the Lieutenant Governor say the same things which he has above stated, concerning the contents of said proclamation, and also this deponent well remembers that immediately after the said proclamation was published, that many Indian slaves were set at liberty in pursuance thereof, and went to other places, wheresoever they pleased. And this deponent further saith, that after the said proclamation was made, as aforesaid, that two men, the descendants of Indians, who was, as this deponent believes, the sons of the said Marie Louise, who had lived with the said Tayon, went to the lower country in a boat, leaving the service of said Tayon, and remained in the lower country, where one of them got married and the other died, sometime afterwards, as this deponent was informed and believes; and this deponent further saith, that he understood the said Joseph Tayon to say, soon after the publication of said proclamation, that the said Marie *Say*pion and Marie Louise lived in his family of their own free consent, because they were well treated and chose to remain with him, but that he, said Tayon, had no right to restrain them of their liberty. And that they, the said Marie *Say*pion and Marie Louise, and their children were at liberty to leave him whenever they pleased; but if they chose to remain with him till his death they should never serve any body. This deponent saith he is seventy-nine years old, that he does not think that his recollection is in the least impaired, at least as regards occurrences which took place in the early part and during the prime and decline of his life; that his health is, and has always been very good, and that he is yet stout for his years, but that he does not feel as though he could safely attend a court of justice, as a witness, on account of the tenderness of his old age; and further this deponent saith not.

his
JOHN B. ⋉ RIVIERRE,
mark.

OBJECTION.

And the counsel for the defendant objected to the reading of all those parts of said deposition, which relate to or, speak of, and concerning the publication, contents, and effects of a proclamation, (in said deposition mentioned,) promulgated and published in St. Louis, by the authority of the Spanish Government, then in office at Orleans, which objection was made on the ground that such evi dence was incompetent;

SUSTAINED—REMAINDER READ.

Which said objection was sustained by the court; and the said court decided that those parts of said deposition should not be read in evidence to the jury, but permitted the remainder of said deposition to be read in evidence to the jury, which was accordingly read.

The plaintiff then produced, and offered to read, in evidence to the jury, the following deposition of Margarite Veal Rivierre, to wit:

DEPOSITION OF M. V. RIVIERRE.

Margaret Veal Real, alias Baccannie, deposeth and saith, that she knew Joseph Tayon, senior, before he was married, which is about thirty-nine or forty years ago, at St. Louis; and also that she knew Madame Tayon, the wife of said Joseph, and that she has understood that both Tayon and his said wife have been dead for many years; that she was frequently at the house of the said Tayon in his life time, and knew the domestic servants of the said Tayon when she saw them, and recollects to have seen one frequently at the house of said Tayon, a woman, whose name was Saypion; that her complexion was that of a dark red mulatto; that she supposes that Saypion was then about thirty or thirty-five years of age, as she had several children, the eldest of which was about seventeen or eighteen years of age, as this deponent supposes; that this deponent does not know any thing concerning the description of the hair of said *Say*pion, whether it was long or short, straight or curly, as she never saw the said *Say*pion bare headed; that she recollects her head being always covered after the fashion of the French, with a turban or handkerchief; that this deponent has frequently heard her father-in-law, Antoine Rivierre, who was a very aged man, who is now dead, and has been dead about nine years, say the said *Say*pion was of Indian descent, and that the father of the said *Say*pion was a negro man, whose name was *Say*pion, and that the said woman called *Say*pion took her name after her father *Say*pion; and that the said woman *Say*pion's mother was an Indian woman of the Natchez tribe of Indians; and this deponent saith, she has frequently heard Antoine Rivierre, her father-in-law, declare the same thing, when speaking of the descent and blood of the said woman *Say*pion.

And this deponent further saith, that she knew an Indian woman, whom she had sometimes seen at the house of Mr. Jacques Chauvin, when he resided in St. Louis, whose name was Marie Tata, as she was generally called, and who was the sister of the said Saypion, as this defendant always understood from the said Antoine Rivierre, as well as from other persons in general, and never heard otherwise from the family of the said Tayon, or Tayon himself, nor any other person; and this deponent saith, that the complexion of Maria Tata, as she was called, was brighter somewhat than the complexion of the wo-

man Saypion, and looked like a clear blooded Indian woman, and that the said Marie Tata was in the exercise of her freedom, and was generally said to be a free woman; that she don't know that she ever heard who was Marie Tata's father, but that she understood from the said Antoine Rivierre, and other people, that the said woman *Saypion* and Maria Tata were sisters by the mother's side.

And this deponent further saith, that she has heard the said Antoine Rivierre say, that he knew the said woman Saypion and her sister Marie Tata at Fort du Chartes, when quite young, before Tayon brought or had them in possession at St. Louis.

And this deponent further saith, that when she was quite young, and during the time that Count O'Reilly was commandant of Louisiana, &c. as this deponent believes, that she heard it generally said as a public matter of notoriety, that the then Governor or Government had ordered, by proclamation,that no more Indians should be bought and sold by the inhabitants of Louisiana, whether prisoners of war or not, and that all Indian slaves, and their descendants, who were then held in Louisiana, should be set at liberty; and this deponent saith that she knew one instance of an Indian descendant, who was a woman, claiming her freedom under the said proclamation, as this deponent believes, and on proving the fact that she was of Indian descent that she was liberated. This deponent saith that she is fifty-eight years of age, as she believes, and that nothing but her age would render her attendance at court inconvenient. Further this deponent saith not.

her
MARGARET VEAL ✕ RIVIERRE.
mark

OBJECTION.

And the counsel for the defendant objected to the reading of all those parts of said deposition which relate to, or speak of or concerning the publication, contents, and effects of a proclamation of Count O'Reilly, the Commandant or Governor General of Louisiana, in said deposition mentioned, which objection was made on the ground that such parts of said deposition were incompetent evidence.

SUSTAINED—REMAINDER READ.

Which said objection was sustained by the court, and the said court decided that those parts of said deposition objected to, were incompetent testimony, and prohibited the plaintiff from reading the same in evidence, but said court permitted the remainder of said deposition, not objected to, to be read in evidence to the jury, which was done accordingly.

DEPOSITION OF RENE DODIER.

The plaintiff then produced, and offered to read in evidence to the jury, the following deposition of Rene Dodier and Frances Dorlac, to wit:

Rene Dodier, being duly sworn on his oath, saith that he knew Marie Scipion; that she lived with Mr. Joseph Tayon; that her complexion was of a brown color, or what was called a half breed of Indian and negro, without designating whether the mother or father were of negro blood or Indian blood; that her hairs were about six inches long, more or less, and *undulating;* that he is fifty-nine years old, and knew her first at Mr. Tayon's, when he was about nine or ten years of age; she was there in the capacity of a servant; that she was then a grown person, and believes about thirty years of age, that he knew her children, to wit, Catiche, Celeste, and Margueritte, that she had also a son who was called Savage, (Indian;) that Margueritte lives now at Pierre Chouteau's; Catiche is hired out, as also Celeste; that the public opinion was that Scipion was a descendant from a negro father and an Indian woman; heard it mentioned by Mde. Chauvin, as well as Mde. Chevalier, (objected to by Col. Lawless;) that Mde. Chauvin and Madame Chevalier, were daughters of Mr. Joseph Tayon, the father.

Question by plaintiff's counsel. What was the public opinion concerning her freedom or slavery?

Objected to by Col. Lawless.

Answer. That the public opinion was, these persons could not be slaves, being of Indian blood.

The deponent saith that he saw Marie Scipion for the first time, at Mr. Tayon's, in a stone house, on the lot now occupied by Mr. Chenie, in St. Louis.

Question by counsel for plaintiff. Was it the universal custom among the French inhabitants of this country, under the French Government, to make slaves of every Indian?

Answer. He never heard of it; under the French Government it was not the case.

Question by same. Did you not understand that Count O'Reilly did by proclamation, prohibit the enslaving of Indians, and holding them as slaves?

Answer. O'Reilly forbade the enslaving of Indians; the same was done by proclamation, made at the sound of the drum, at the corners of the streets, both at New Orleans and in St. Louis.

(Objected to by Col. Lawless.)

Question by same. Did not O'Reilly, by proclamation, declare the Indians held as slaves to be free, and direct their being set free?

Objected to as aforesaid.

Answer. Yes; and it was further ordered that none should thereafter be held as slaves; that the same regulations applied to both Lower Louisiana and this country; that all Indians held as slaves were to be emancipated and set free.

Question by same. Did you know of any Indian held as slave, previous to the proclamation aforesaid, to have been set at liberty in consequence?

Answer. Yes.

FRANCIS DORLAC—DEPOSITION.

Francis Dorlac being duly sworn, on his oath saith, that he is sixty-five years of age, was born in St. Genevieve; he further saith, that he knew Marie Scipion,for the first time, about forty-three years ago; she was living at Mr. Tayon's, the father, in the town of St. Louis, on the lot now occupied by Mr. Chenie; she was of a reddish cast; the custom at that time was to wear the hair concealed under a handkerchief, but what was seen of her hairs appeared to be curly, somewhat like a half-breed; heard from Mde. Chevalier and Mde. Chauvin, that she was born of a negro father and an Indian mother, (objected to by Mr. Lawless;) heard of it at St. Charles; that he heard it said that she was half Indian and half negro; understood (by proclamation from the Government,) that the Government did not sanction Indian, that Indians held in slavery, on application to the commandant or Governor at New Orleans, were set at liberty; he knew of two of Mr. Tayon's Indian slaves being set at liberty under that proclamation; one of a Mr. Lorraine, immediately after the promulgation of the Spanish decree relating to Indian slavery; all the Indian slaves were set at liberty; never heard the proclamation published, tho' it might have been so when he was absent; never saw it stuck up any where; knew of its publication by public report, and understood at the same time that a provision of the said proclamation, that no other Indians should be brought down the Missouri to be enslaved; supposes that Marie Scipion might have been set free at New Orleans, as others were, upon application, if she had had the means of going down; knew Maria Tata, she was the sister of Marie Scipion; he knew her at St. Genevieve forty-nine years ago; she afterwards lived at Prairie du Rocher; she was a full-blooded Indian; never saw the father of Marie Scipion; understood that he was a negro.

Question by Mr. McGirk. What was the practice of the French with respect to enslaving slaves?

Answer. I do not know.

Question by same. Was it the custom of Indians who came about the French villages to engage themselves to the inhabitants as laborers, and live with them as servants?

Answer. No.

Question by the same. What became of the Indians held in slavery under the French and Spanish Governments?

Answer. The few that were here went down to New Orleans, where, upon application, they were set free, (for they never would have been set free here,) and afterwards scattered about.

Question. Do you know any others of the Indian slaves held by

the French inhabitants of this country, other than the children of Marie Scipion, being held in slavery at this time?

Answer. No; I know of no others; those that were not liberated at New Orleans, went about here, and never were again attempted to be enslaved.

OBJECTION TO PART SUSTAINED—REMAINDER READ.

And the counsel for the defendant objected to the reading of those parts of said depositions which relate to, or speak of, a proclamation of the Governor or Government of Louisiana, and the publication contents and effect thereof, which objection was made on the ground, that such parts of said depositions as relate to, or speak of and concerning said proclamation, and its publication and contents, were incompetent testimony to go to the jury; which said objection was sustained by the court, and the said court decided, that those parts of said deposition objected to as aforesaid, were incompetent evidence to go to the jury, and prohibited the plaintiff from reading the same in evidence; but said court permitted the remainder of said depositions to be read in evidence to the jury, no other objections having been made, which were read accordingly.

TESTIMONY OF JOSETTE BERGER.

The plaintiff then called and examined Josette Berger, who being duly sworn in the cause, to testify upon her oath, deposed and said, that she was raised from a child by Madame Helen Chevalier, and continued in the family of said Helen about sixteen years. That she (the witness) was intimate in the family of Joseph Tayon, the father of said Helen, and knew the members and slaves in said Tayon's family. That there were in said Tayon's family, some colored people who were not slaves, particularly an Indian woman named Marie Louise, and her children. Witness also knew another colored woman in said Tayon's family, called Marie Scipion, in the quality of a servant in the family, who was in said Tayon's kitchen; said Marie Scipion was a mulattress, and appeared to be half Indian and half negro. That witness did not know, of her own knowledge, but always heard and understood, in said Tayon's family, that the mother of said Marie Scipion was an Indian woman, and her father a negro man, named Scipion. That Madame Chevallier has been dead for some years. Witness further stated, that she had heard, (without stating from whom), that Madam Tayon had got Marie Scipion, the mother of the plaintiff, as a gift, or as an heir.

TESTIMONY OF FRS. MARECHALL.

The plaintiff then called and examined Francis Marechall, a *very old man*, who being sworn in the cause, to testify upon his oath, deposed and said, that he knew Joseph Tayon and his family well, whilst said Tayon lived at Fort Chartres, in the State of Illinois; that

he first knew said Tayon at Fort Chartres upwards of *sixty years ago*, in 1759; and about fifty years ago, said Tayon removed with his family from Fort Chatres to St. Louis in this State; that witness knew Tayon till his death, and that Tayon remained in St Louis, from the time of his removal till his death. Witness further stated, that he knew Marie Scypion, the mother of the plaintiff; that she lived in the family of Tayon, and passed for a *gruffe*, or half Indian and half negro; that her father was said by every body, and particularly by *Antoine Rivierre*, the father-in-law of the witness, who was a very old man, and is now dead, to be a negro man, and that her mother was an Indian of the Natchez tribe of Indians. Witness also knew the sister of Marie Scypion, who was by appearance a full-blooded Indian, whose name was Marie Tata. Witness further stated that he always understood, by general report, and public opinion, that the mother of Marie Scipion was a full blooded Indian; that he first heard it upwards of fifty years ago, and that he often heard it from Antoine Rivierre, his father-in-law, who was about 112 or 114 years of age when he died, and that said Rivierre has now been dead nine or ten years. That Antoine Rivierre stated that he was well acquainted with the mother of Marie Scipion, when she first came to Fort Chartres, from the Natchez country.

TESTIMONY OF MADAME MARESCHAL.

The plaintiff then called Madame Mareschall, who being sworn to testify in the cause, upon her oath, deposed and said, that she knew Joseph Tayon, sen. first, when he lived at Fort Chartres, in the Illinois, nearly opposite the town of St. Genevieve, in this State, in which latter place witness then lived. She first knew said Tayon at Fort Chartres, more than sixty years ago; that Tayon then had a family; she also knew Tayon in St. Louis, after his removal from fort Chartres, which happened more than fifty years ago. That Tayon died nearly 20 years ago in St. Louis, at the house of Pierre Chouteau, sen. That Tayon had several children, amongst whom were Madame Helen Chevallier, and Madame Chauvin, who are now both dead. Tayon had another daughter called Jeannette. Witness also knew a colored woman in Tayon's family called Marie Scipion, who passed for half Indian and half negro amongst every body who knew her. Witness first remembers to have seen Marie Scipion in St. Louis at the house of Tayon, about the time St. Louis was first settled, and thinks she was then about 20 years of age. Witness always understood, by general reputation, that the mother of Marie Scypion was an Indian squaw, and that her father was a negro man. Witness also heard it from one Pierre O. Becket, and Antoine Rivierre, who were very old men, and both now dead. Witness knew the sister of Marie Scipion, whose name was Marie Tata, and was a full blooded Indian woman. Witness recollects to have heard Antoine Rivierre say, about forty years since, that he knew the mother of Marie Scipion well, and that the mother was an Indian squaw, and the father a negro man; that the hair of Marie Scypion was black, and several inches

in length, and somewhat curled but not like the hair of a negro, her complexion was reddish, but darker than that of a common mulatto.

TESTIMONY OF MADAME A. LALANDE.

The plaintiff then called Madame Alexis La Lande, who being sworn to testify in the cause, upon her oath, deposed and said, that she first knew Marie Scypion in the family of Joseph Tayon, thirty-five or six years ago, and frequently saw her passing about the town. She was a griffe, half Indian and half negro ; that some people said she was an Indian, and some that she was a griffe ; her hair was several inche lsong and inclined to curl. Witness always heard and understood that Marie Scypion was the daughter of an Indian woman, and a negro man. Witness heard Pierre O. Becket, and Antoine Rivierre say so more than twenty years ago, and from many others.

TESTIMONY OF JOHN B. C. LUCAS.

The plaintiff thencalled and examined John B. C. Lucas, who being duly sworn in the case, upon his oath, deposed and said, that about 20 years ago, this deponent, was one of the judges of the general superior court, in the then Territory of Missouri; that some time in the year 1805 or 1806, there was a suit in said court between Joseph Tayon, sen. and one or more of the children of Marie Scypion, probably the present plaintiff and others, which involved a contest for the freedom of the plaintiff here, who was then one of the defendants, that the pedigree and descent of the defendant, in the suit then before the court, came directly in question. The question was, whether the then defendant, and others, were descended inthe material line from an Indian woman. Witness was sitting on the bench as a member of the court, during the trial, and devoted much attention to the testimony given on both sides: amongst other witnesses on the part of the then defendant, was Antoine Rivierre, Pierre O. Becket, Louis Labeaume, Madame Chevallier, and Madame Chauvin, the daughters of Joseph Tayon, sen. were sworn in court testify in the cause then on trial. Also, on the part of Tayon, the plaintiff, a certain Madame Cochon, of Prarie du Rocher, was sworn to testify in the cause. Antoine Rivierre, sometimes called Baccanne, who was then a very aged man, who stated that he was then upwards of ninety years old, and seemed to boast a little of his great age, and seemed to be proud of his knowledge of events long past by; was a stout and healthy man for his years, and seemed to have the perfect use of his senses and understanding.

TESTIMONY OF ANT. RIVIERRE, 20 YEARS AGO.

Rivierre stated on oath, on the trial of said cause, that the mother of Marie Scypion was an Indian woman, of the Natchez tribe of Indians. That the mother of Marie Scypion was brought to Fort Chartres, after the defeat ot the Natchez Indians, by the French, on or

about the time of the massacre, as it was called. Rivierre further states, that the father of Marie Scypion, was a negroman, and that he was well acquainted with both the father and the mother of Marie Scypion, also, that the name, "Marie Scypion," was a combination of the names of father and mother, as he understood it. Rivierre further stated, on oath, that when the mother of Marie Scypion was brought to Fort Chartres, that he, the witness, was a young man, not old enough to go to hunt or fight.

TESTIMONY OF P. O. BECKET, 20 YEARS AGO.

Pierre O. Becket, another witness who testified in the same cause, stated, as well as witness remembers, that he was then about 80 or 82 years old; that he knew the mother of Marie Seypion, at Fort Chartres, in Illinois, and she was an Indian squaw; that he understood from general report, that she was of the Natchez tribe, and was brought to fort Chartres about the time of the defeat of the Natchez Indians, and that he saw her in the station of a servant in the kitchen, but knew nothing of her slavery or freedom. Mr. Lucas further stated, that both Baccannie, or Rivierre, and O. Becket, spoke in the most positive terms concerning their knowledge of the mother of Marie Scypion.

TESTIMONY OF L. LEBEAUME, MDE. CHAUVIN, MDE. CHEVALIER, 20 YEARS AGO.

Mr Lucas testified, that Louis Labeaume, Helen Chevalier and Madame Chauvin, who all testified on the part of the descendants of Marie Scypion, in said suit, and who all agreed in their testimony, that some time about the change of government in this country, and just before or about the time, that the United States took possession of this country, Joseph Tayon, sen. in conversation with the witnesses in St. Louis, at the house of Madame Laiselle, stated that, if Indians and their descendants were free, that Marie Scypion and her descendants were all free, because the mother of Marie Scypion, was an Indian woman.

TESTIMONY OF MADAME COCHON, 20 YEARS AGO.

Mr. Lucas further testified, that Madame Cochon, who testified on the part of Tayon, in said suit, swore that when she was a girl, of some nine or ten years old, she lived at Prairie du Rocher, in Illinois, not far from Fort Chartres; that she lived either with her mother or aunt, in that village, who was by profession a midwife; that Joseph Tayon sent a negro woman there, who was pregnant, to be delivered and nursed by her mother, or aunt, and that Marie Scipion was the issue of that negro woman, born at that birth; that when Madame Cochon testified, she was then about 65 or 66 years old; that Madame Coechn was the only witness who testified that the mother of Marie Sypion was a negro, and stated no other means of knowledge of that fact, than that circumstance before mentioned. Mr. Lucas further

stated, that he nothing of these facts, of his own knowledge, nor indeed any thing touching the pedigree and descent of Marie Scypion, till they were detailed in evidence by said witnesses on the trial of said cause. Mr. Lucas further stated, that Mr. O. Becket testified the name *Marie Scypion*, was given to the said Marie Scypion, because it was the name of her father and mother combined; she was therefore called by both names:

The defendant produced and offered to read in evidence the following deposition of Sebastian Pratte, to wit:

S. PRATT'S DEPOSITION.

Sebastian Pratte, of lawful age, being produced, sworn and examined, on the part of the defendant, deposeth and saith: he arrived in 1756 in the country, and in 1757 went to Fort Chartres. He lived with Tayon, Joseph Tayon, the father-in-law of Mr. Pierre Chouteau, sen. While he lived with Mr. Tayon he observed the slaves of Mr. Tayon in the first year of his residence: he had a negro woman called Marie, one Indian woman named Marie Louise; the Indian had two children, there was one slave also, a female, called Sypion, who appeared to be about ten or eleven years old, she was treated and well known as a slave; he knew her in the possession of Mr. Tayon after he removed to St. Louis, and for several years after, and he had no other slave by that name but her; did not know the mother of Sypion; there were at Fort Chartres, and elswhere through the country, a great many Indian slaves and but few blacks, the Indians were universally *acknowledged* as slaves, and frequent sold as such before the Governor; he himself sold several, one to the commandant, that he brought from the Mississippi. Sypion was very black, had hair like a negress; the commandant he speaks of was the English commandant at Kaskaskia. From his belief of the character of Mr. Tayon, he is certain he would not have sold a person as a slave, who was not so; he was in the habit of frequenting Mr. Tayon's house in Fort Chartres, and a long time after in St. Louis, and never heard Mr. Tayon say Scypion was free, but on the contrary, she was always treated as a slave. A majority of the Indians, held then as slaves, came down the Missouri, brought by the traders, and were of different nations; there were many Indian slaves after the first establishment of St. Louis, and few blacks in it; Mr. Tayon removed to St. Louis soon after its establishment.

OBJECTION TO PART—OVERRULED.

The plaintiff's counsel objected to the reading of those parts of said deposition which speak of and concerning the number of Indian slaves, and the existence of Indian slavery in Illinois and Louisiana, and also objected to those parts of said deposition which speak of, and concerning the number of negro slaves in the country, and the sale of Indian slaves; which objection was, by the court overruled, and

those parts of said deposition objected to as aforesaid, were permitted, by the court, to be read in evidence to the jury.

ANOTHER OBJECTION—SUSTAINED.

The plaintiff's counsel also objected to so much of said deposition being read in evidence as relates to, or speaks of, the knowledge of deponent concerning the *character* of Joseph Tayon, and to the conclusion drawn by the deponent, from his knowledge of Tayon's character, which said objection was, by the court, sustained, and those parts of said deposition were not read. The defendant's counsel read the remaining parts of said deposition, not excluded as foresaid, to the jury. The defendant's counsel then produced, and offered to read in evidence to the jury, the following deposition of Auguste Chouteau, to wit:

A. CHOUTEAU'S DEPOSITION.

Auguste Chouteau sworn: Marie Scypion was a negro slave, belonging to Mr. Joseph Tayon; (a female) he always understood that she was the daughter of a negro woman, slave to Mr. Gouion, which Mr. Gouion gave to Mr. Joseph Tayon, his relation; Marie Scypion was of a brown color, with *very woolly hair*, like that of a negro; knew Marie Scypion a very long time; the first time in the year 1764, he hired her often, sometimes for 15 days, sometime more; he always knew her as a slave belonging to Mr. Tayon, of whom he hired her, and paid for her services; he never knew the mother of Marie Scypion; does not know when she died, did not know her father; she was universally known to be of negro blood on the mother's side. At the arrival of the Spanish Government here there were slaves of Indian blood, and after, of the mother's side.

Question by plaintiff's attorney. How he knew the fact that Mr. Guyon gave the mother of Marie Sypion to Mr. Tayon?

He heard it publicly said that Mr. Guyon gave a negro woman and man, with other slaves, and a plantation, to Mr. Tayon, his relation.

Question. Did you know it any other way than by public report?

Answer. No; only by public report at Fort Chartres.

Question. Did you know the name of the mother of Marie Sypion?

Answer. No.

Question. Did you ever see her, the mother?

Answer. No.

Question. How old was Marie Scypion when you first knew her?

Answer. She was a young girl; does not know her age, but she was able to do the work of the house.

Question. Do you think she was as much as fifteen years old?

Answer. He does not know.

Question. Was Marie Sypion a negro woman?

Answer. Yes, she was a negro, at least I considered her as such.

Question. Had she not the complexion of an Indian?

Answer. No; she was a reddish black, not the least of the Indian color.

Question. Was Mr. Tayon in possession of Maria Scypion until her death?

Answer. He does not know.

Question. How long is it since you saw Marie Scipion last?

Answer. Twenty-five or thirty years ago.

Question. Had Mr. Tayon no other slave by the name of Marie Scypion?

Answer. Not that he knows of.

Question. Do you know how many slaves Mr. Tayon had?

Answer. He had several, but does not know how many.

Question. Did you know all the slaves of Mr. Tayon?

Answer. No, he had many.

Question. Do you know whether Marie Sypion was the mother of Margarette, plaintiff in this action?

Answer. She had several children, but does not know if this was one, Celeste, Catiche, and others.

OBJECTION—OVERRULED.

The plaintiff's counsel objected to reading such parts of said deposition as speak of, or concerning the existence or number of Indian slaves in the country, and also to such parts of said deposition as speak of, or concerning the gift of Marie Scypion and other things, by Garguion, or Guion, to Tayon; but the court overruled the objection, and allowed the whole of said deposition to be read in evidence to the jury; which was read accordingly.

MAD. VEUVE DUBREIUL'S DEPOSITION.

The defendant's counsel then produced, and offered to read in evidence the following deposition of Madam Veuve Dubreuil, to wit:

Madame Veuve Dubreuil sworn: I knew Marie Sypion well; she was often hired by me, of Mr. Joseph Tayon; she was always known as a mulatto slave; she was a dark mulattress; she knew her for the first time about fifty years ago, when she first came to this country; she was wet nurse to one of her children for six months, at her master's house, Mr. Joseph Tayon; she was generally considered as a slave of negro blood; she had several children—Catiche, and one called Louvier, which was a nic-name; she does not know the real name; always knew her as the slave of Mr. Joseph Tayon, viz, Marie Sypion—is certain she was of negro blood, as certain as that she is one day to die.

Examination of plaintiff's attorney. Question. Of what age was Scypion when you first knew her?

Answer. More than twenty-five, and had several children.

Question. Did you know either the father or mother of Scypion?

Answer. Oh, no.

Question. Was she in Mr. Tayon's possession when she, witness, first saw her, Marie Sypion?

Answer. Yes.

Question. How do you know that Marie Sypion was of negro blood?

Answer. She was black, and had wool upon her head—she did not want papiliots to curl her hair.

Question. Was she a negro or mulatto woman?

Answer. She was so dark a mulatto that she appeared more like a negro.

Question. Are you certain her hair was curly?

Answer. It was curled like a sheep.

Question. Did you know if Scypion was a slave or not?

Answer. Always knew her as a slave.

Question. Have you never heard Joseph Tayon say Sypion was a free woman?

Answer. Oh, no; she was always a slave; she would not have remained there if she had been free.

Question. How do you know she would not have remained?

Answer. If I knew it? If my mulatto woman knew she was free would she remain?

Question. Did you know all the slaves of Mr. Tayon?

Answer. I paid no attention to how many, but this woman was frequently hired by me; I knew her well; did not know how many.

Question. Was you intimate with Mr. Tayon's family? and were you frequently at his house during his life time?

Answer. She was intimate, and on most friendly terms, of course; frequently there, ever since she has been in the country, until their death.

Question. Do you recollect ever to have seen in the possession of Mr. Tayon, Indian or half Indian slaves?

Answer. Yes, there was one who died lately; she does not know how many he had.

Question. Had Mr. Tayon any female Indian slaves about his house when you knew him?

Answer. There was an old woman, who died about twelve years ago.

Question. What was her name?

Answer. Marie Louise.

Question. Was she not sometimes called Marie Sypion?

Answer No, certainly not; she was a slave until the Spanish Government declared her free; many Indian slaves remained with their masters after they were so declared.

Question. Did Marie Louise remain with Mr. Tayon after she was declared free?

Answer. She does not know.

Question. Were you in this country when the Spanish Government took possession?

Answer. No, I was at New Orleans.

Question. Did you ever know any other Joseph Tayon in this country?

Answer. No, except his son.

Question. Was Marie Sypion the mother of Margaret, the plaintiff?

Answer. She was.

Question. How do you know it?

Answer. I have head it so said.

Question. Do yo know Margaret?

Answer. No, but I believe her to be the one named Lourie.

Question. How old are you?

Answer. Seventy.

Which said deposition was read to the jury.

The following deposition of Julie Papur Vasques, was then produced and read to the jury by the defendant's attorney, to wit:

JULIE VASQUES—DEPOSITION.

Julie Vasques sworn: I knew Marie Sypion at Mr. Joseph Tayon's about forty or forty-five years ago, as a slave. she was nearer to a negro than a mulatto in color, her hair was woolly like that of a mulatress; I went often to Madam Tayon's, and saw her there as a servant; never knew any other slave but her belonging to Mr. Tayon of the same name; Marie Sypion had children, one named Catiche, and Celeste, and Lourie; she saw Marie frequently in possession of Mr. Tayon's children, left to them by their father; she was generally known here to be the slave of Mr. Tayon, and a mulatress; never knew her mother.

Cross examined by plaintiff's attorney. Question. Was not Marie Sypion sometimes called Marie Tata?

Answer. She knows nothing about it, she always heard her called Marie Sypion.

Question. Did you know the father of Sypion?

Answer. No.

Question. Did you know all of Mr. Tayon's slaves when you saw them?

Answer. She knew them when she saw , but does not know how many.

Question. Had Mr. Tayon any Indian slaves, *male* and female?

Answer. No; I do not know.

Question. Were there any Indian people living with Mr. Tayon?

Answer. Several, one called Marie Louise; know not the names of any other.

Question. Were those Indians living with Mr. Tayon as slaves or as free persons?

Answer. At that time they passed as slaves.

Question. Did you know Marie Scipion until her death?

Answer. No.

Question. How long did you know Marie Sypion from first to last?

Answer. about ten years, but is not certain.

Question. When did Mr. Tayon die?

Answer. She does not know, but has not seen him for twenty years.

Question. Do you know what became of Sypion after Mr. Tayon's death?

Answer. Does not know, but knew her as the slave of Mr. Tayon.

ELIZABETH HORTIZ—DEPOSITION.

The defendant then produced and read in evidence to the jury the following deposition of Elizabeth Horitz, to wit:

Elizabeth Hortiz sworn: I knew Marie Sypion, as a slave of Mr. Joseph Tayon, thirty-eight or thirty-nine years ago; a very dark mulatress; saw her frequently, as she was hired out by Mr. Tayon as a slave; knew her until her death, about twenty years ago, always as the slave of Mr. Tayon; had the hair of a mulatress; she had three children, Catiche, Celeste, Lurie, as she was called, Margarette, her real name. Marie Sypion was always publicly known as the slave of Mr. Tayon.

Cross examined by plaintiff's attorney. Question. Which died first Mr. Tayon or Sypion?

Answer. Sypion.

Question. How many years before Mr. Tayon?

Answer. One or two.

Question. Did Sypion live with Mr. Tayon at the time of his death?

Answer. She died with her master at Pierre Chouteau's, senior.

Question. Did you know the father or mother of Sypion?

Answer. No.

Question. Did you know, of your own knowledge, that Sypion was the slave of Mr. Tayon?

Answer. Yes; always saw her serve in his house or hired out, as his slave.

Question. Marie Sypion, had she no nick-name?

Answer. No; never heard any other than Marie Sypion.

Question. Do you know that Marie Sypion was mother of Celeste, Catiche, and Lourie?

Answer. Yes, they always called her mother.

Question. How do you know that Lourie is Margarette?

Answer. She has heard her called Margarette, and baptised, as was said, by that name.

Question. Was Sypion not reserved at the sale of Mr. Tayon, and also her children?

Answer. She knows nothing of it.

The defendant gave no other evidence to the jury, nor was any other given by the plaintiff, but as above set out.

The plaintiff's counsel then prayed the court to instruct the jury as follows, to wit:

INSTRUCTIONS PRAYED FOR BY PLAINTIFF.

1st. That if the jury find, from the evidence, that the ancestor of the plaintiff, in the maternal line, was an Indian woman, they must find for the plaintiff.

2d. That if the maternal ancestor of the plaintiff was taken a prisoner in war, she did not thereby become a slave.

3d. That hearsay evidence is not competent to prove the fact that the maternal ancestor of the plaintiff was taken a prisoner of war.

4th. That evidence of the maternal ancestor of the plaintiff being held as a slave during the French Government of Louisiana, does not establish the legality of the slavery in which the plaintiff may be held.

5th. That no practice of enslaving Indians, during the time Louisiana belonged to the French, is evidence that such practice was sustained by law.

6th. That a prisoner of war cannot be reduced to slavery, unless under such circumstances as would authorize putting him to death; and that, unless evidence of such circumstances is given to the jury, they must consider such slavery, under the pretence of the ancestor of the plaintiff being taken a prisoner in war, as illegal.

7th. That the right to hold a prisoner of war in slavery, continues no longer than the political necessity exists for such enslaving, and that when such necessity ceases, the prisoner can no longer be held in slavery.

INSTRUCTIONS REFUSED.

All of which said several instructions were, by the court, refused.

The said defendant, by his counsel, then moved the court to instruct the jury as follows, to wit:

INSTRUCTIONS PRAYED FOR BY DEFENDANT.

1st. If the jury find from the evidence, that the maternal grandmother of the plaintiff was an Indian woman, of the Natchez nation, taken captive in war by the French, and that she was held *and sold* as a slave in the province of Louisiana whilst the same was held by the French, and prior to the year 1769, she and her decendants ought to be considered as being lawfully slaves.

2d. If the jury find from the evidence that the maternal grandmother of the plaintiff was an Indian woman, taken captive in war by the French, and was held *or sold* as a slave in the province of Louisiana, while the same was held by the French, and prior to the year 1769, she and her descendants ought to be considered by the jury as being lawfully slaves.

3d. If the jury find from the evidence, that the maternal grandmother of the plaintiff was an Indian woman taken captive in war by the French, and was held and sold as a slave in the province of Louisiana, while the same was held by the French, and prior to the year 1769, she and her descendants ought to be deemed by the jury as being lawfully slaves.

4th. If the jury find, from the evidence, that the maternal grandmother of the plaintiff was an Indian woman taken captive in war and held as a slave in the province of Louisiana, while the same was held by the French and prior to the year 1769, she and her descendants ought to be taken by the jury to *have been* lawfully slaves.

5th. If the jury find from the evidence, that the maternal grandmother of the plaintiff was a negro or Indian woman, and that she was held as a slave in the province of Louisiana, while the same was held by the French, and prior to they ear 1769, she and her descendants ought to be taken by the jury to have been lawfully slaves.

6th. That the declarations of Joseph Tayon as testified by John B. Rivierre in his deposition, do not lawfully operate to emancipate said Marie Sypion or any of her children, nor is the plaintiff entitled to her freedom in consequence of said declaration.

7th. That Indians taken in war might lawfully be held as slaves in the province of Louisiana while the same was held by the French, and prior to the year 1769.

8th. That Indians might lawfully be reduced to and held in slavery, in the province of Louisiana, while the same was held by the French and prior to the year 1769.

DEFENDANT'S INSTRUCTIONS GIVEN.

All of which said instructions were by the court given to the jury.

EXCEPTION.

To all of which said opinions and decisions of said court, in rejecting the said evidence offered by said plaintiff; in admitting said evidence of by said defendant, and objected to by said defendant, by her counsel; in given said instructions to the jury as prayed for by said defendant by his counsel, and in refusing to give the said instructions to the jury, prayed for by plaintiff by her counsel; the said plaintiff, by counsel, excepts, and prays the court to sign and seal this her bill of exceptions; and prays that this, her said bill, may be made a part of the record of the court in this cause, which is done accordingly.

It was in proof, that the mother of Marie Sypion, before the birth of said Marie Sypion, was held and claimed as a slave, and continued so to be until her death, and that Marie Sypion and her issue have been so held and claimed ever since. Mr. Lucas also stated that it seemed to be given up on all hands, by the old witness, he mentioned at the time of the trial spoken of by him, that the mother of Marie Sypion was *de facto* a slave, and held and treated as such.

WILL. C. CARR. [SEAL.]

APPEAL PRAYED AND GRANTED.

And thereupon, at the said March Term of the said circuit court, in the year one thousand eight hundred and twenty-seven, Margue-

ritte, by Isaac C. McGirk, her agent and attorney, files her affidavit in this case, and prays an appeal to the Supreme Court, which is granted, and the record and proceedings ordered to be certified up accordingly.

Whereupon, the clerk of said circuit court, under the seal thereof, duly certified up to said Supreme Court, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and twenty-seven, a transcript of the record of the preceedings of said circuit court in the aforesaid cause.

JUDGMENT REVERSED IN SUPREME COURT.

And afterwards, to wit, on the fourteenth day of November, in the year one thousand eight hundred and thirty-four, the judgment and opinion of said supreme court in said cause, was filed in the office of the clerk of the said circuit court, reversing the judgment aforesaid, and remanding the same cause for further proceedings therein, in conformity with the opinion of said supreme court.

And thereupon, afterwards, to wit, at the November term of said circuit, in the year one thousand eight hundred and thirty-four, in the record of proceeding of said court, is entered the following order:

CHANGE OF VENUE TO ST. CHARLES.

Tuesday 30th December, 1834.—*Margurite* vs. *Pierre Chouteau.*

The judge of this court having been of counsel in this case, it is ordered by the court that the venue be changed to the county of St. Charles, in the second judicial circuit of this State, and that the clerk of this court do certify and transmit a full transcript of the record and proceedings in this cause, together with all papers appertaining to and filed in the cause, to the clerk of the said circuit court, for the county of St. Charles, at the next term thereof.

STATE OF MISSOURI—*County of St. Louis, ss.*

I, Archibal Gamble, clerk of the circuit court for the county of St. Louis, certify that the foregoing is a full transcript of the record and proceedings of said circuit court, in a certain matter therein depending, between Margueritte, plaintiff, and Pierre Chouteau, senior, defendant, as the same now remains of record and on file in my office.

In testimony whereof, I hereunto subscribed my name and affix the seal of said court, at office, in the city of St. Louis, the eight day January, eighteen hundred and thirty-five.

[SEAL.] ARCHIBALD GAMBLE, *Clerk.*

PROCEEDINGS IN ST. CHARLES CIRCUIT COURT.

STATE OF MISSOURI—*County of St. Charles, ss.*

Be it remembered, that heretofore, to wit, on the twenty-first day of October, in the year of our Lord eighteen hundred and thirty-five, was filed in the office of the clerk of the circuit court for the said county of St. Charles, the accompanying transcript of the record and proceedings in the case of Margueritte vs. Pierre Chouteau, commenced in the circuit court of the county of St. Louis, and thence taken up by appeal to the supreme court of the State of Missouri, where judgment was given and the case remanded to the circuit court of the said county of St. Louis, and thence removed on an order of change of venue to the said county of St. Charles, in which said cause, at the October term of our said court, on the ninth day thereof, it being the twenty-first day of said month, in the year aforesaid, the following order was made, to wit:

CHANGE OF VENUE TO JEFFERSON COUNTY.

Margarite vs. *Pierre Chouteau.*

The judge of this court having been of counsel in this case, it is ordered by the court that the venue be changed to the county of Jefferson, in the seventh judicial circuit of this State; and that the clerk of this court do certify and transmit a full transcript of the record and proceedings in the cause, together with all the papers appertaining to and filed in the same, to the clerk of the circuit court for the said county of Jefferson, at the next term thereof."

STATE OF MISSOURI—*County of St. Charles, ss.*

I, William Christy, jr. clerk of the circuit court within and for the county aforesaid, certify the above to be a full and correct transcript of the record and proceedings in the case of Margueritte vs. Pierre Chouteau, as the same now remain of record in my office, and the accompanying papers are all that pertain to the said cause.

Given under my hand and the seal of said court, at my office in St. Charles, this 27th day of October, A. D. 1835.

[SEAL.] WILLIAM CHRISTY, Jr.

By Deputy, J. D. JOHNSTON.

PROCEEDINGS IN JEFFERSON CIRCUIT COURT.

And afterwards, to wit, at the November term of said circuit court for the county of Jefferson, the following order was made in said cause, in the year 1835.

CONTINUED.

Margurite vs. *Pierre Chouteau*—Continued.

And at the March term of said court, in the year eighteen and thirty-six, the following order was made.

CONTINUED.

Margurite vs. *Pierre Chouteau*—Action for freedom.

And now, at this day, the parties appear by their respective attorneys, and on motion and affidavit filed by the defendant, it is ordered that this cause be continued until the next term of this court, at his costs. And at the July term of said court, in the year eighteen hundred and thirty-six, the following order was made in the cases of Marguerite against Pierre Chouteau, Helen against same, Cateche, against same, Baptiste against same, Antione against same, and Julie against same.

AGREEMENT OF PARTIES.

And now, at this day, come the parties in the *the* above causes by their attorneys, and it is agreed by the said parties that it stand admitted, that all the said plaintiffs are descended in the maternal line from Marie Sapion (who is mentioned in the deposition) that the above causes may be decided by the trial of one, if the plaintiff elect before the jury are sworn.

CONTINUANCE.

And that all the depositious taken and on file in either of said causes, may be read on the trial of all, and all the above causes are continued upon the application and at the costs of the defendant. And at the November term of said court, in the year eighteen hundred and thirty-six, the following order was made:

Now at this day come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit, Lawson Cooley, William McMillen, Thomas Mass, William Bartlett, John Warner, Francis Macania, Johnson H. Alford, John McFadden, John Smith, Davis Williams, Isaac Carrow and Lewis Todd, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues joined between the parties aforesaid, upon their oath do find, as to the first issue within joined between the parties aforesaid, that the said defendant is guilty of the said wrongs and injuries in the declaration mentioned, in manner and form as the said plaintiff hath above thereof complained against him, and as to the second issue within joined, between the parties aforesaid. the jurors aforesaid, upon their oath aforesaid, do find that the said plaintiff was

not, at the time of the committing the said grievances, a slave in manner and form, as the said defendant hath in his second plea alleged, but was a free person; and they assess the damages of the said plaintiff, by her sustained, by reason of the said wrongs and injuries, to one cent.

JUDGMENT.

Therefore it is considered that the said Margueritte recover of the said Pierre Chouteau her damages aforesaid, in form aforesaid, by the jury assessed, together with her costs and charges by her, about her suit in this behalf expended, and that she have thereof execution. And it is further considered, that the said Margueritte be liberated, and be entirely set free from the said Pierre Chouteau, and from all persons claiming from, through or under him. And thereupon, the said defendant by his attorney, files his bill of exceptions, in the the words and figures following, to wit:

BILL OF EXCEPTIONS.

Be it remembered, that at the trial of this cause, it was admitted, that the plaintiff is the daughter of a woman named Marie Scipion, mentioned in the depositions hereinafter set forth.

The following depositions were then read in evidence, by the plaintiff:

DEPOSITIONS—J. B. RIVIERRE *alias* BACCANNEE.

John B. Rivierre alias Baccannee, deposeth and saith, that he knew Joseph Tayon, senior, formerly a resident of St. Louis, and Louise Tayon, his wife, in their life time. That they have both been dead for many years; and that the said Tayon and wife were the father and mother of Madame Chauvin and Madame Chevallier, and John and Francis Tayon and Charles Tayon; that he first became acquainted with the said Tayon and wife at Fort du Chartres, in Illinois, from his earliest recollection, and that he was acquainted with them afterwards and until their deaths; and that this deponent was intimate in the family of said Joseph Tayon, and was very often at the house and in the family of said Joseph Tayon, as well at Fort Chartres as at St. Louis, and that his intimacy and intercourse with said Tayon and family, rendered the house of said Tayon almost as familiar to this deponent as his own house. That this deponent was perfectly well acquainted with all the members of said Tayon's family, his domestic servants, slaves and dependants, as well as the other members of the family; that this deponent knew a mulatto woman who lived in the family of said Tayon, whose name was Marie Scipion; that her complexion was that of a dark red Indian cast, partaking of the complexion of negro and Indian; that he thinks the said Marie Saypion was about eighteen or twenty years of age when he first saw her at Fort Chartres, and that this deponent knew Marie Scipion ever after till the time of her death; that the hair

of the head of said Marie Saypion was about one foot in length, and curled a good deal, but not so much curled as the hair of an African negro, and that he has seen the hair of mulattoes more curled than the hair of said Marie Scipion; that said Marie Saypion generally wore a handkerchief on her head after the fashion of the French, but that he has also seen her without any covering on her head except her hair. That Marie Saypion had several children, one named Lourie, which he believes was a nick name, who was a girl, and now lives with Pierre Chouteau, senior, in the town of St. Louis, and that Marie Saypion had several other children, whose names he does not now know; and this deponent further saith that he was well acquainted with an Indian woman who always exercised her personal freedom without the restraint of any person, as far as this deponent knows and believes, who was a perfect Indian in appearance, and was universally allowed to be of the Natchez tribe, who had adopted the French mode of life and their manners and habits, and lived at Prairie du Rocher with a half breed man called Basques, and that her name was generally called Marie Tata; and this deponent further saith, that he has often heard his deceased father, Antoine Rivierre, say that the said Marie Tata was the sister of the mother of Marie *Say*pion, whose name he does not recollect to have heard, and that what his father said was confirmed by common opinion and report of other people generally, who knew the said Marie Tata and the said Saypion; and further this deponent saith that he has often heard his said deceased father often say, that he was well acquainted with the mother of the said Marie Saypion, who was an Indian woman of the Natchez tribe of Indians, and that the mother of the said Marie Saypion was the sister of Marie Ta ta. That this deponent recollects of having heard it said, when this deponent was a boy, by other people in their jokes, that this deponent's father was very intimate with Marie Tata and had sometimes played the part of her beau. And this deponent further saith, that he has often heard his deceased father say, and other persons in general, as well as Joseph Tayon, senior, and his family say, that the father of said Marie Saypion, was a negro man, and that his name was Saypion also, and that the said Saypion was drowned or smothered in the bottom of a well at Prairie du Rocher, which caved in upon him whilst he was cleaning it out, where his body remained; and that this deponent has often heard Joseph Tayon, senior, say the same things, as well as many other persons. And this deponent further saith, that he recollects to have formerly seen a half Indian woman at the house and in the family of the said Joseph Tayon, senior, whose name was called Marie Louise; and this deponent recollects to have heard the said Tayon say that the said Marie Louise was a half Indian woman; that the said Tayon gave this deponent to understand that the said Marie Saypion and Marie Louise were given to the wife of said Tayon, by a cousin to his wife, whose name was Garguion or Guyon, who was a priest at Fort du Chartres and Prairie du Rocher; and that this deponent understood the said Tayon and his wife both to say that said Marie Saypion and Marie Louise were given to the said Tayon's wife by the said Garguion or Guyon, upon the condition that the said

Marie Saypion and Marie Louise and all their children should be set at liberty from servitude when ever the said Tayon and wife should both be dead. And further, that this deponent has heard the said Tayon and wife both say several times that the said Marie *Say*pion and Marie Louise and their children were all to be free at their death, and should serve nobody afterwards—because such was the condition on which they were given to them by the said Garguion or Guyon. And this deponent further saith, that many years ago, fifty or more, that a proclamation was promulgated and published in St. Louis by authority of the Spanish Governor, then in office at New Orleans, and during the time that Pierre Ignate was Lieutenant Governor or commandant at the post of St. Louis, by hand bills at the church door, in St Louis, which this deponent heard read, being unable to read it himself, whereby it was declared that all the Indians and the descendants of Indians, who were or had been held in slavery by the French and Spaniards, whether taken in war, purchased from the Indians, and all those who should be thereafter taken by the inhabitants of Louisiana in war, or in any way, should be purchased by the inhabitants from the Indians, were, and should be free, and discharged from servitude as slaves, and be allowed to remain in the settlements if they chose, or to depart to their own country. At what precise time this proclamation was made, this deponent cannot now remember, but this deponent is positively certain that such proclamation was made, and also, that he then heard the Lieutenant Governor say the same things which he has above stated, concerning the contents of said proclamation, and also this deponent well remembers that immediately after the said proclamation was published, that many Indian slaves were set at liberty in pursuance thereof, and went to other places, wheresoever they pleased. And this deponent further saith, that after the said proclamation was made, as aforesaid, that two men, the descendants of Indians, who was, as this deponent believes, the sons of the said Marie Louise, who had lived with the said Tayon, went to the lower country in a boat, leaving the service of the said Tayon, and remained in the lower country, where one of them got married and the other died, sometime afterwards, as this deponent was informed and believes; and this deponent further says, that he understood the said Joseph Tayon to say, soon after the publication of said proclamation, that the said Marie Saypion and Marie Louise lived in his family of their own free consent, because they were well treated and chose to remain, but that he, the said Tayon, had no right to restrain them of their liberty; and that they, the said Marie Saypion and Marie Louise, and their children, were at liberty to leave him whenever they pleased; but if they chose to remain with him till his death they should never serve any body. This deponent saith that he is seventy-nine years old, that he does not think that his recollection is in the least impaired, at least as far as regards occurrences which took place in the early part and during the prime and decline of his life; that his health is, and has always been very good, and that he is yet stout for his years, but that he does not feel as though he could safely attend a court of jus-

tice, as a witness, on account of the tenderness of his old age; and further this deponent saith not.

his
JOHN B. ⋈ RIVIERRE,
mark.

MARGARET V. RIVIERRE.

Margaret Vail Rivierre deposeth and saith, that she knew Joseph Tayon, senior, before she was married, which is about thirty-nine or forty years ago at St. Louis, and also that she knew Madame Tayon, the wife of the said Joseph, and that she has understood that both Tayon and his said wife have been dead for many years; that she was frequently at the house of said Tayon in his life time, and knew the domestic servants of the said Tayon, when she saw them, and recollects to have seen one frequently at the house of said Tayon, a woman whose name was Saypion; that her complexion was that of a dark red mulatto; that she supposes that Saypion was then about thirty or thirty-five years of age, as she had several children, the eldest of which was about seventeen or eighteen years of age, as this deponent supposes; that this deponent does not know any thing concerning the description of the hair of said Saypion, whether it was long or short, straight or curly, as she never saw the said Saypion bare headed; that she recollects her head being always covered after the fashion of the French, with a turban or handkerchief; that this deponent has frequently heard her father-in-law, Antoine Rivierre, who was a very aged man, who is now dead, and has been dead about nine years, say that the said Saypion was of Indian descent, and that the father of the said Saypion was a negro man, whose name was Saypion, and that the said woman called Saypion took her name after her father Saypion; and that the said woman Saypion's mother was an Indian woman of the Natchez tribe of Indians; and this deponent saith, she has frequently heard the said Antoine Rivierre, her father-in-law, declare the same thing, when speaking of the descent and blood of the said woman Scypion.

And this deponent further saith, that she knew an Indian woman, whom she had sometimes seen at the house of Mr. Jacques Chauvin, when he resided in St. Louis, whose name was Marie Tata, as she was generally called, and who was the sister of the said Saypion, as this deponent always understood from the said Antoine Rivierre, as well as from other persons in general, and never heard otherwise from the family of the said Tayon, or Tayon himself, nor any other person; and this deponent saith, that the complexion of Maria Tata, as she was called, was brighter somewhat than the complexion of the woman Saypion, and looked like a clear blooded Indian woman, and that the said Marie Tata was in the exercise of her freedom, and was generally said to be a free woman; that she don't know that she ever heard who was Marie Tata's father, but that she understood from the said Antoine Rivierre, and other people, that the said woman Scypion and Maria Tata were sisters by the mother's side.

And this deponent further saith, that she has heard the said Antoine Rivierre say, that he knew the said woman Saypion and her sister Marie Tata at Fort du Chartres, when quite young, before Tayon brought or had them in possession at St. Louis.

And this deponent further saith, that when she was quite young, and during the time that Count O'Reilly was commandant of Louisiana,&c. as this deponent believes, that she heard it generally said as a public matter of notoriety, that the then Governor or Government had ordered, by a proclamation, that no more Indians should be bought and sold as slaves by the inhabitants of the Louisianas, whether prisoners of war or not, and that all Indian slaves, and their descendants, who were then held in Louisiana, should be set at liberty; and this deponent saith that she knew one instance of an Indian descendant, who was a woman, claiming her freedom under the said proclamation, as this deponent believes, and on proving the fact that she was of Indian descent that she was liberated. This deponent saith that she is fifty-eight years of age, as she believes, and that nothing but her age would render her attendance at court inconvenient; and further this deponent saith not.

her
MARGARET VEAL ✕ RIVIERRE.
mark

RENE DODIER.

Rene Dodier, being duly sworn on his oath, says that he knew Marie Sapion; that she lived with Mr. Joseph Tayon; that her complexion was of a brown color, or what is called a half breed of Indian and negro, without designating whether the mother or father were of negro blood or Indian blood; that her hairs *was* about six inches long, more or less, and undulating; that he is fifty-nine years old, and knew her first at Mr. Tayon's, when he was about nine or ten years of age; she was there in the capacity of a servant; that she was then a grown person, and believes about thirty years of age, that he knew her children, to wit, Catiche, Celeste, and Margueritte; she had also a son who was called Sauvage, (Indian;) that Margueritte lives now at Pierre Chouteau's; Catiche is hired out, as also Celeste; that the public opinion was that Scipion was descended from a negro father and an Indian woman; heard it mentioned by Mde. Chauvin, as well as Mde. Chevallier, that Mde. Chevallier, and Madame Chauvin were daughters of Mr. Joseph Tayon, the father.

Question by plaintiff's counsel. What was the public report concerning her freedom or slavery?

Answer. That the public opinion was, these persons could not be slaves, being of Indian blood.

The deponent saith that he saw Marie Sapion for the first time, at Mr. Tayon's, in a stone house, on the lot now occupied by Mr. Chenie, in St. Louis.

Question by counsel for plaintiff. Was it the universal custom among the French inhabitants of this country, under the French Government, to make slaves of every Indian?

Answer. He never heard of it; under the French Government it was not the case.

Question by same. Did you not understand that Count O'Reilly did, by proclamation, prohibit the enslaving of Indians, and holding them as slaves?

Answer. O'Reilly forbade the enslaving of Indians; the same was done by proclamation, made by the sound of the drum, at the corners of the streets, both at New Orleans and in St. Louis.

Question by same. Did not O'Reilly, by proclamation, declare the Indians held as slaves to be free, and direct their being set free?

Answer. Yes; and it was further ordered that none should thereafter be held as slaves; that the same regulations applied to both Lower Louisiana and this country; that all Indians held as slaves were to be emancipated and set free.

Question by same. Did you know of any Indian held as slave, previous to the proclamation aforesaid, to have been set at liberty in consequence of the same?

Answer. Yes.

his
RENE ⋊ DODIER.
mark

FRANCIS DORLAC.

Francis Dorlac being duly sworn, on his oath saith, that he is sixty-five years of age, was born in St. Genevieve; he further saith, that he knew Marie Scipion, for the first time, about forty-three years ago; she was then living at Mr. Tayon, the father, in the town of St. Louis, on the lot owned by Mr. Chenie; she was of a reddish cast; the custom at that time was to wear the hair concealed under a handkerchief, but what was seen of her hairs appeared to be curly, somewhat like a half-breed; heard from Mde. Chevalier and Mde. Chauvin, that she was born of a negro father and an Indian mother, heard of it at St. Charles; that he heard it said that she was half Indian and half negro; understood (by proclamation from the Government,) that the Government did not sanction Indian slavery, that Indians held in slavery, on application to the commandant or Governor at New Orleans, were set at liberty; he knew of two of Mr. Tayon's Indian slaves being set at liberty under the proclamation; one of a Mr. Lorraine, immediately after the promulgation of the Spanish decree relating to Indian slavery; all the Indian slaves were set at liberty; never heard the proclamation published, tho' it might have been so when he was absent; never saw it stuck up any where; knew of its publication by public report, and understood at the same time that a provision of the said proclamation, that no other Indians should be brought down the Missouri to be enslaved; supposes that Marie Scipion might have been set free at New Orleans, as others were, upon application, if she had had the means of going down; knew Maria Tata, she was the sister of Marie Scipion; he

knew her at St. Genevieve forty-nine years ago; she afterwards lived at Prairie du Rocher; she was a full-blooded Indian; never saw the father of Marie Scipion; understood that he was a negro.

Question by Mr. McGirk. What was the practice of the French with respect to enslaving *slaves*?

Answer. I do not know.

Question by same. Was it the custom of Indians who came about the French villages to engage themselves to the inhabitants as laborers, and live with them as servants?

Answer. No.

Question. Did you ever know any Indians to go among the white inhabitants, and remain with them as servants?

Answer. No.

Question by the same. What became of the Indians held in slavery under the French and Spanish Governments?

Answer. The few that were here went down to New Orleans, where, upon application, they were set free, (for they never would have been set free here,) and afterwards scattered about.

Question by same. Do you know any others of the Indian slaves held by the French inhabitants of this country, other than the children of Marie Scipion, being held in slavery at this time?

Answer. No; I know of no others; those that were not released at New Orleans, went about here, and never were again attempted to be enslaved.

his
FRANCIS ⋊ DORLAC.
mark

JOSETTE BERGER.

Josette Berger being duly sworn, on her oath saith, that she is acquainted with Catiche, the above named mulatto woman, who is claimed by Pierre Chouteau, senior, as his slave; that the mother of Celeste was Marie Scipion; that Marie Scipion was a mulatress, partly Indian and negro blood; that she understood that her father was a negro, and the mother an Indian woman of the Natchez tribe of Indians—this she understood in the family of the Tayons, she the deponent, having been raised by Mde. Chevalier, the daughter of Mr. Joseph Tayon; that when deponent first knew Marie Scipion, she was living at Mr. Tayon, the father; that said Marie Scipion lived with Mr. Tayon until the death of Mad. Tayon his wife, when she moved to the family of Mde. Chauvin, also a daughter of said Joseph Tayon; that it is about forty years since she first heard of said Marie Scipion being of Indian blood; that she was always represented in the family of Tayon as being of Indian blood. The deponent states that she, the said deponent, was raised in the family of said Tayon, and came to them when very young; that she, the deponent, heard often mention of a certain Marie Tata, in the family of said Tayon,

though she never knew her; understood that she was an Indian or half Indian woman; does not know whether she ever lived in the family of Tayon, understood that she lived at the Prarie du Rocher; understood that Marie Scipion had come to said Tayon in right of his wife, who had received her of some of her friends as a present at Fort Chartres. The deponent further saith, that she is acquainted with the children of Catiche; they are *Arazche Chehte*, Julie, Joseph, Ellene; that they are still held as slaves by the said Pierre Chouteau, senior; that she knows of three of Marie Scipion's children, none living, to wit, Catiche, Celeste, and Marguerite; that, in the family of Mr. Tayon they were treated not as slaves, but as persons who from their birth might be entitled to freedom; that it was not uncommon, formerly, to see in white families Indian men and women as servants, for a limited time, though they were not considered as slaves.

her
JOSETTE ⋊ BERGER.
mark

LOUIS LEMONDE.

Louis Lemond being also duly sworn, on his oath saith, that he was acquainted with Joseph Tayon, senior; that he first knew him in this place about twenty-five or thirty years ago; knew a woman named Marie Scipion, whom he understood to be Mr. Tayon's servant; that she was of a brown color, her hairs were undulated, not very long, and black; never knew her parents; understood generally, that the mother of said Marie Scipion was Indian or of Indian blood, and was the current report. The deponent further saith, that he does not recollect hearing say who the father of Marie Scipion was.

Question by defendant's attorney. Was Marie Scipion understood to be the slave of Mr. Tayon, or treated as such?

Answer. I do not know, I never was at Mr. Tayon's house.

Question by same. Do you know any of the children of Marie Scipion?

Answer. I know Catiche.

Question by same. With whom did Catiche live previous and subsequent to the death of her mother, Marie Sapion?

Answer. She always lived with Mr. Cade (Pierre Chouteau) I understood her to be his slave.

his
LOUIS ⋊ LEMONDE.
mark.

MARIE LACLEDE.

Marie Laclede being also duly sworn, on he oath saith, that she knew Sapion, the mother of Catiche, who lived with Mr. Tayon; that she knew her about forty years ago; she was of a red complexion; her hairs were long, say about six inches, and undulated. She does not know who the mother of Marie Sapion was, she never trou-

bled herself about it. She knew Marie Tata, the sister of Sapion; she was a full blooded Indian; saw her many times; she was addicted to drinking, and many times frightened this deponent. Marie Sapion was currently reported to be of Indian blood, her father was a black man, and her mother of Indian blood, and from the circumstances of her sister Marie Tata being a full blooded Indian, she infers that Marie Scipion must have been of Indian blood.

Question by defendant's attorney. You state that Marie Tata was the sister of Marie Scipion, how do you know that?

Answer. I understood it was so, I did not know it of my own knowledge, I was too young then, but was told so. I knew her at St. Genevieve.

Question by same. When you knew Marie Scipion, was she a slave in the family of Mr. Tayon?

Answer. I do not know, I never troubled myself about the slaves who were at their master's.

Question by same. How old were you when you first knew Marie Sapion?

Answer. I do not exactly know, I came here to live about two years after the year of the attack; Marie Scipion was then here, living at Mr. Tayon's; never heard how the mother of Marie Scipion came into the hands of Mr. Tayon, nor how Marie Scipion herself came there

her
MARIE ⋈ LACLEDE.
mark.

MADAM L. CHAUVIN.

Madam Marie Louise Chauvin, upon her oath saith, she is acquainted with Margaret, the plaintiff in the present action, who lives with Pierre Chouteau, who she believes was born in the year 1778. She saith she was acquainted with the mother of said Margaret, whose name was Marie Jean, and was sometimes called Marie Scipion, who belonged to and lived with the father of the deponent, Joseph Tayon. Said Marie, after the death of Madam Tayon, lived at Mr. Chouteau's, where Joseph Tayon lived until his death. After the death of Madame Tayon, Marie Scipion lived with Mr. Chouteau several years, until she was taken sick, when she came to the house of this deponent, where she died. She was at the time of her death about sixty years of age, as well as this deponent recollects. This deponent saith the Joseph Tayon, after the death of his wife, lived with Mr. Pierre Chouteau, where he died. Marie Scipion died in June, 1802. In January, 1801, this deponent sent for the said Marie Scipion to Mr. Pierre Chouteau's where she was sick, and in June, in the year following, she died; remaining with this deponent more than a year. The said Marie Scipion was in the possession of this deponent's father from the time of his marriage until she was removed from Mr. Chouteau's to the house of this deponent, and this deponent has always understood she came to her father by his

marriage. This deponent knows Catiche and Celeste, children of the said Marie Scipion, the said Catiche is now in the possession of Mr. Pierre Chouteau, and Celeste is a part of the estate of Madame Helen Chevalier. Mr. Chouteau claims the said Celeste by virtue of a sale from this deponent, but when this deponent sold her pretensions to the said Chouteau, she knows not whether her husband signed the articles of sale. This deponent raised the said Catiche from a year old, and she was about forty years old when this deponent sold her to Mr. Chouteau. During this time Mr. Chouteau obtained possession of the said Catiche, and kept possession about ten years, and this deponent regained possession about a year before she sold her pretensions. This sale was some where about eight or ten years since. The said Catiche was a gift from this deponent's parents to this deponent. Madame Chevalier raised Celeste, from her birth, at which time she was given to her by Joseph Tayon and wife, who were the father and mother of the said Madame Chevallier. The said Celeste was in the continued possession of the said Madame Chevallier until she was taken therefrom by Mr. Chouteau, about the same time he took Catiche from the possession of this deponent. This deponent knows not under what title the said Chouteau claimed the said Catiche and Celeste; unless it was as the administrator or one of the heirs of the said Joseph Tayon. This deponent has heard from her father and mother that the said Marie Sapion was bought by this defendant s grand mother from Madame Erve, and given by her to the mother of this deponent. This deponent has heard from her mother and father that the said Marie Scipion was, on the mother's side, an Indian, and *and* the deponent knew a negro man who was generally said and believed to be the father of the said Marie Scipion—his name was Scipion. The last this defendant knew of this negro man, his master took him to New Orleans. This deponent has generally understood that the mother of the said Marie Scipion was an Indian, captured by the French near Natchez, and brought to Fort Chartres, and sold as a slave, and this she has heard as well from her father and mother as others. This deponent knew Marie Tata, the sister of Marie Scipion, who had every appearance of being a full blooded Indian; who was a slave when this deponent first knew her, but was afterwards owned by a Frenchman and set at liberty, he having lived with her as a wife, and had children. The father of this deponent had an Indian woman named Marie Louise, who had two male children, Acken and Julien, who ran away and passed for free men, at the commencement of the Spanish government, and went to Orleans, where one of them married a white woman. They went away after the publication of an ordinance by O'Reily, the Spanish governor of Louisiana, declaring all the Indian slaves then in the province of Louisiana, free on the death of their masters, and those born after the publication, free at their birth—prohibiting any sales by the persons then in possession of any such slaves. This deponent read the ordinance to her father and conversed with him on the risk he ran of losing his Indian slaves, and remembers that he sold one of those slaves and was compelled to take it back and hush it up least he should be

fined under the ordinance. This ordinance was posted up at the church door and in hand bills at St. Louis, where this deponent then lived, which was before her marriage, but the exact time she does not recollect. This deponent remembers that her father has often times said after the publication of this ordinance, that Marie Scipion and her children would be free at his death, in consequence of that ordinance. MARIE LOUISE CHAUVIN.

J. B. C. LUCAS.

John B. C. Lucas, of the city of St. Louis, of lawful age, being duly sworn, upon his oath saith, that he knows nothing of his own knowledge, of the matter in controversy. That some years ago, whilst he was one of the judges of the superior court of the territory of Missouri, about twenty-four years ago, and since that time, there were trials before the said court relating to the freedom of the descendants of Marie Scipion, which said Marie Scipion was understood and admitted to be the property of a Mr. Tayon, of St. Louis; that particularly at the first trial, which took place more than twenty years ago, he heard a man by the name of Baccane who said that he was past the age of eighty years, and one Pierre Bequet, who said that he was seventy-two years of age or more, who both stated on oath, before said court, that they knew Marie Scipion at Fort Chartres, whilst the said Tayon lived at that place, that they also knew her mother, of the name of Marie; that the said Marie, mother of Marie Scipion, was an Indian woman of the Natchez tribe; that he also heard a woman, sworn in the same case, of the name of *Crotion*, who deposed that she knew Marie, the mother of Marie Scipion; that she was a black woman or negro woman; that the two first named witnesses were as positive that Marie, the mother of Marie Scipion was an Indian woman, as the last named witness was that said Marie was a negro woman. This deponent recollects also, that Baccanne stated that he was a young man at the time he knew Marie, whom he said to be an Indian woman. Madam Cochon stated in her testimony that she was very young, and not a woman grown, when she knew Marie, whom she had before stated to be a negro woman. The deponent understood from the whole testimony given, that Marie spoken of by Baccanne and Pierre Bequet was the same woman also spoken of by Madam Cochon; the witnesses, Baccanne and Pierre Bequet also, in their testimony, explained why the name of Marie Scipion was acquired by her, it being from the circumstance that she was the daughter of said Marie, and a negro man called Scipion, who was generally reputed to be the father of said Marie Scipion, and who was a negro man; it was also given in testimony that said Marie had another daughter called Marie Tata who was half Indian and half white, and that said Marie Tata, generally called Marie Scipion her sister; that Madam Chauvin, who was the daughter of the defendant Tayon, at the trial in which Bacanne and Bequet and Lewis Labeaume testified, that Mr. Tayon, the defendant, said in the house of Madam Chauvin, not long before, perhaps two or three years, and in their

presence, that if the descendants of Indians by the female were free, or could not be slaves, Marie Scipion and her descendants were free or ought to be free. Madam Cochon, as well as this deponent recollects, stated in her testimony that she was about sixty-five years of age at the time she testified as aforesaid, and she also testified that the mother of Marie Scipion was brought to be at the house of the mother or aunt of said Cochon, who was a midwife, and at that time she, Madam Cochon, was a small girl. Cross examined by Mr. Spalding, attorney for the defendant.

Question. In giving the account of the testimony of Baccanie, Bequet and others, above, do you give the words of those witnesses, or merely the substance of their testimony, as you understood it?

Answer. I may or may not give the words. I have not such a nice recollection as to that; these people were, from all appearance, illiterate; they spoke French without appearing to be versed in the principles of the language, but the subject matter being in relation to something very plain, I am satisfied that their language was plain and explicit, and no doubt remains in my mind as to the meaning of what they said, which is indubitably as I have stated before, being acquainted with the French language, not less practically than theoretically.

Question by same. Did said Bacanne say he was well acquainted with the mother of Marie Scipion, and did he say of what tribe of Indians she was?

Answer. He said he was well acquainted with the mother of Marie Scipion, and that she was of the Natchez tribe of Indians.

Question by the same. Did the said Bacanne say how he obtained his information that she was of the Natchez tribe?

Answer. I have a general recollection of a variety of questions put to said Baccanne to ascertain the fact that she was of the Natchez tribe, but not particular enough to designate or specify how or in what manner he had ascertained that she was of that tribe, he appeared generally to speak particularly on the subject, and as a witness, pretty confident of what he said, and referred repeatedly to his being a man grown when these things took place.

Question. Did said Bacannie speak of said Marie as being a captive taken in war?

As these questions, respecting the freedom of the descendants of Marie Scipion, was frequently before the court, while this deponent was one of the judges of the said superior court, and has also been before the circuit court, since this country has become a State, in which latter case he was called as a witness, he has heard a great deal of testimony given upon the same question, in these two courts; he has heard, for instance, a question made, how the witness giving testimony had come to the knowledge that Marie, the mother of Marie Scipion was of the Natchez tribe, but cannot say whether such question was put to Bacanne, and if so, what answer he made. All he remembers, but is not very confident that it was stated by Baccanne, that he, Baccanne was living at Fort Chartres when Marie was brought in a prisoner.

Question by same. Did said Baccannie and Bequet state that Marie, the mother of Marie Scipion, was held as a slave at Fort Chartres?

Answer. I believe they did.

Question. Did you keep any written notes of what the witnesses stated on said trials?

Answer. I believe I did, but I do not recollect to have consulted them since, and I think they are now lost.

Question by same. What sort of proceeding was it that the evidence of Bacanne, Bequet, Cochon, Chauvin, Labeaume, and others, were given as aforesaid?

Answer. There was so much irregularity in the proceedings that I cannot state accurately, but it was a question of freedom between Tayon and the descendants of said Marie Scipion.

Question. What was the result of that proceeding?

Answer. There was a verdict given for the defendant Tayon, and and a judgment of the court in his favor.

JOHN B. C. LUCAS.

STATEMENT OF J. B. C. LUCAS.

The plaintiff also read to the jury, a statement of John B. C. Lucas, as follows:

In the case of Carmelite against Pierre Chouteau, senior, in the St. Louis circuit court, for freedom, judge John B. C. Lucas was sworn as a witness on the part of the plaintiff, who stated on oath, that he knows nothing of the descent or parentage or condition of the plaintiff of his own knowledge, but what he does know he has derived from others; that on a trial for freedom by some of the descendants of a certain colored woman called Marie Scipion, against Joseph Tayon, senior, in the old general or superior court of Missouri, in 1805 or 1806, whilst he sat as a judge in that court, that one Pierre Bequet and *and* old man, Rivierre, the father of John Baptiste Rivierre, one of the witnesses sworn in this suit, were sworn as witnesses in that cause, and gave testimony in court. That old man Rivierre, then stated on oath that the mother of Marie Scipion (the mother of the plaintiff) was an Indian woman of the Natchez tribe of Indians; that she was brought to Fort Chartres, in the now State of Illinois, about the time of the Natchez defeat by the French, from New Orleans, and that witness heard she was taken at that place; that she was in the capacity of a servant among the French at Fort Chartres, during her life; that when the mother of Marie Sapion was brought to Fort Chartres, the witness (old Bacanie) was a young man, not old enough to go to battle; that Marie Sapion's mother was brought to For Chartres about the time of the defeat of the Natchez Indians by the French of Lower Louisiana; that Bacannie was perhaps about ninety years old, but was a hale old man for his years, and seemed to be in possession of his memory and faculties perfectly. Witness further stated, that Pierre Bequet testified on said trial that he knew the mother of Marie Scipion at Fort Chartres in Illinois, who was an In-

dian woman of the Natchez tribe; that she was taken by the Louisiana French at the Natchez defeat, as was reported, and brought to Fort Chartres about the time of that defeat, and that she was held in slavery at Fort Chartres by him, who had possession of her. Judge Lucas further testified that, on the trial of said cause, a certain Madam Cochon was sworn and testified on the part of the defendant Tayon, and that she testified that her aunt was a midwife in Fort Chartres, with whom the witness (Madam Cochon) had lived, and that Marie Scipion was born of a negro woman, who was then in the cure and nursing of her aunt, and that her aunt officiated as midwife at the birth; that she, the witness, was then quite young. Mr. Lucas testified that Madam Helen Chevalier and Madam Chauvin, daughter of Joseph Tayon, the then defendant, and Louis Lebeaume (who are now all dead) were also sworn in said suit, and testified on the part of the plaintiffs, that they severally testified that about the time of the publication of one of proclamations of Governor General O'Reilly, in Upper Louisiana, which proclamation had relation to the liberation of Indian persons taken by the Louisiana French, and by them detained as slaves; that Joseph Tayon, who then held Marie Scipion in slavery, stated in a conversation with said witness on that subject, that according to that proclamation or ordinance, Marie Scipion and her children were all free, because the mother of Marie Scipion was an Indian woman. Mr. Lucas further stated, after voluntarily returning to the bar, that Madame Cochon did not swear that she herself acted as midwife at the birth of Marie Scipion, nor was the mother of Marie Scipion there under her care, but that it was the mother or aunt of the witness, (vide C.) who was the nurse and midwife. That Pierre Bequet appeared to have the full exercise of his faculties and senses when he testified, although he was a very old man. That the question then before the court (old superior court) was one of pedigree of the plaintiff.

MADAME MARESCHALL'S TESTIMONY.

In the case of Carmelite, before named, Madame Mareschall was sworn, and testified as a witness on the part of the plaintiff, who staed on oath, that she knew Josepn Tayon, when he lived at Fort Chartres, in Illinois, opposite or nearly opposite to St Geneveive, which was more than sixty years since; he then had a family. She also knew him after he removed to and resided in St Louis, which removal was nearly fifty years since; that Tayon died about twenty years since, in St. Louis, at the house of Pierre Chouteau, the defendant. He had several children, to wit, Joseph, Francis, Charles, and John, and his daughters were Madame Helen Chevallier, Madam Chauvin, and another called Jeanette. Witness knew Marie Scipion at Tayon's, who passed as a gruffe, that is half negro and half Indian. First saw Marie Scipion, about fifty years since, when St. Louis was first settled. Marie Scipion was then probably about twenty years of age. Witness always heard and understood that Maria Scipion's mother was an Indian squaw, and her father a negro

man. Witness recollects particularly to have heard old Rivierre, called Baccanne, (who died about 10 years since, at the age of 112) say about forty years ago; that he knew the mother of Marie Scipion well, and that she was an Indian squaw, and her father a negro. Witness further stated, that the hair of Marie Scipion was black, and several inches long, rather curley, but not like that of a negro; her complexion was rather reddish, but darker than an equal mixture of white and black, or that of a common mulatto; that the witness was born in the village of Cahokia, in Illinois; never heard old Rivierre say that the mother of Marie Sctpion was taken in war; that witness knew Maria Tata, who was an Indian woman, and was generally reported to be the sister of Maria Scipion.

FRANCIS MARESCHALL'S TESTIMONY.

In the case of Marguerite against P. Chauteau for freedom, in the circuit superior court of St. Louis county, Francis Mareschall was sworn as a witness, and testified, on behalf of the plaintiff, who stated on oath, that he knew Joseph Tayon at Fort Chartres, in Illinois, upwards of sixty years since, and afterwards at St. Louis, when he first came to settle himself, about fifty years since, at the time Canada was taken by the English; he knew Tayon till his death. Witness resided in St. Louis. Witness knew Tayon's family till his death; that Tayon died at Pierre Chauteau's house. Witness knew Marie Scipion, who lived in Tayon's family; she passed for a half Indian and half negro; always heard, and understood from public report, that her mother was an Indian, and her father a negro man; first heard of her parentage more than fifty years ago, from Bacannie, the elder, who died eight or nine years since, who was about 114 years old at his death, and was the father-in-law of the witness; that said Baccannie, or Rivierre, said he was well acquainted with the mother of Marie Scipion, when she came to Fort Chartres, from Natchez, and got her freedom. Witness stated that he also heard the same things from many other persons, both old and young, that he the sister of Marie Scipion, who was a full blooded Indian, her name was Maria Tata, and that Marie Tata frequently came with her children to see Maria Scypion, and witness understood they were sisters from themselves.

DEFENDANT'S DEPOSITIONS.—AUGUSTE CHOUTEAU'S DEPOSITIONS.

The defendant then read to the jury the following depositions:—Auguste Chouteau, sen. sworn. Maria Scypion was a negro slave belonging to Mr. Joseph Tayon, a female; he always understood that she was the daughter of a negro woman, slave to Mr. Guion, which Mr. *Ganion* gave to Mr. Joseph Tayon, his relation. Marie Scipion was of a brown color, with woolly hair, like that of a negro; knew Marie Scipion a very long time; the first time in the year 1764; he hired her often, sometimes for 15 days, sometimes more; he always knew her as a slave belonging to Mr. Tayon, of whom he

hired her, and paid for her services; he never knew the mother of Maria Scipion; does not know when she died; did not know her father. The was universally known to be of negro blood, on the mother side. On the arrival of the Spanish Government here, there were slaves of Indian blood, and after the mother's side.

Question by plaintiff's attorney. How he knew the fact that Mr. Gayon gave the mother of Marie Scipion to Mr. Tayon? He heard it publicly said that Mr. Gayon gave a negro woman and man, with other slaves and a plantation, to Mr. Tayon, his relative.

Question. Did you know it any other way than by public report?

Ans. No; only by public report at Fort Chartres.

Question. Did you know the name of the mother of Marie Scipion?

Ans. No.

Question. Did you ever see her, the mother?

Ans. No.

Question. How old was Marie Scipion, when you first saw her?

Ans. She was a young girl; does not know her age, but she was able to do the work of the house.

Question. Do you think she was much as fifteen years old?

Ans. He does not know.

Question. Was Marie Scipion a negro woman?

Ans. Yes; she was a negro, at least I considered her as such.

Question. Had she not the complexion of an Indian?

Ans. No; she was a reddish black, not the cast of an Indian color.

Question. Was Mr. Tayon in possession of Marie Scipion, until her death?

Ans. Does not know.

Question. How long is it since he saw Marie Scipion last?

Ans. 25 or 30 years ago.

Question. Had Mr. Tayon no other slave by the name of Marie Scipion?

Ans. Not that he knows of.

Question. Do you know how many slaves Mr. Tayon had?

Ans. He had several, but does not know how many.

Question. Did you know all the slaves of Mr. Tayon?

Ans. No; he had many.

Question. Do you know whether Marie Scipion was the mother of Margueritte, plaintiff in this action?

Ans. She had several children, but does not know if this was one—Celeste, Catiche and others.

AUG. CHOUTEAU.

MDE. DUBRIEUL.

Madame Veuve Dubrieul sworn: I knew Marie Scipion well; she was often hired by me, of Mr. Joseph Tayon; she was always known as a mulatto slave; she was a dark mulattress; she knew her for the first time about fifty years ago, when she first came to the country; she

was wet nurse to one of her children for six months, at her master's house, Mr. Joseph Tayon; she was generally considered as a slave of negro blood; she had several children—Catiche, and one called Lourie, which was a nick name; she does not know the real name; always knew her as the slave of Mr. Joseph Tayon, viz: Marie Scipion—is certain she was of negro blood, as certain as that she was one day to die.

Examination by plaintiff's attorney. Question. Of what age was Scipion when you first knew her?

Answer. More than twenty-five, and had several children.

Question. Did you know either the father or mother of Scipion?

Answer. Oh, no.

Question. Was she in Mr. Tayon's possession when she, witness, first saw her, Marie Scipion?

Answer. Yes.

How do you know that Marie Scipion was of negro blood?

Answer. She was black, and had wool upon her head—she did not want papiliots to curl her hair.

Question. Was she a negro or mulatto woman?

Answer. She was so dark a mulatto that she appeared more like a negro.

Question. Are you certain her hair was curly?

Answer. It was curled like a sheep.

Question. Did you know if Scipion was a slave or not?

Answer. Always knew her as a slave.

Question. Have you never heard Joseph Tayon say Scipion was a free woman?

Answer. Oh, no; she was always a slave; she would not have remained there if she had been free.

Question. How do you know she would not have remained?

Answer. If I knew it? If my mulatto woman knew she was free would she remain?

Question. Do you know all the slaves of Mr. Tayon?

Answer. I paid no attention to how many, but this woman was frequently hired by me; I knew her well; did not know how many.

Question. Was you intimate with Mr. Tayon's family? and were you frequently at his house during his life time?

Answer. I was intimate, and of most friendly terms, of course, frequently there, ever since she has been in the country, until their death.

Question. Do you recollect ever to have seen in the possession of Mr. Tayon, Indian or half Indian slaves?

Answer. Yes; there was one who died lately; she does not know how many he had.

Question. Had Mr. Tayon any female Indian slaves about his house when you knew him?

Answer. There was an old woman, who died about twelve years ago.

Question. What was her name?

Answer. Louise.

Question. Was she not sometimes called Marie Scipion?

Answer No, certainly not; she was a slave until the Spanish Government declared her free; many Indian slaves remained with their masters after they were so declared.

Question. Did Marie Louise remain with Mr. Tayon after she was declared free?

Answer. She does not know.

Question. Were you in this country when the Spanish Government took possession?

Answer. No; I was at New Orleans.

Question. Did you ever know any other Joseph Tayon in this country?

Answer. No, except his son.

Question. Was Marie Scipion the mother of Margaret, the plaintiff?

Answer. She was.

Question. How do you know it?

Answer. I have head it so said.

Question. Do yo know Margaret?

Answer. No, but I believe her to be the one named Lourie.

Question. How old are you?

Answer. Seventy.

VEUVE DUBRUEIL.

JULIE VASQUES.

Julie Vasques sworn: I knew Marie Scipion at Mr. Joseph Tayon's about forty or forty-five years ago, as a slave; she was nearer to a negro than a mulatto in color, her hair was woolly like that of a mulatress; I went often to Madam Tayon's, and saw her there as a servant; never knew any other slave but her belonging to Mr. Tayon of the same name; Marie Scipion had children, one named Catiche, and Celeste, and Lourie; she saw Marie frequently in possession of Mr. Tayon's children, left to them by their father; she was generally known here to be the slave of Mr. Tayon, and a mulatress; never knew her mother.

Cross examination by plaintiff's attorney. Question. Was not Marie Scipion sometimes called Marie Tata?

Answer. She knows nothing about it, she always heard her called Scipion.

Question. Did you know the father of Scipion?

Answer. No.

Question. Did you know all of Mr. Tayon's slaves when you saw them?

Answer. She knew them when she saw them, but does not know how many.

Question. Had Mr. Tayon any Indian slaves, male and female?

Answer. No; I do not know.

Question. Were there any Indian people living with Mr. Tayon?

Answer. Several, one called Marie Louise; know not the name of any other.

Question. Were these Indians living with Mr. Tayon as slaves or as free persons?

Answer. At that time they passed as slaves.

Question. Did you know Marie Scipion until her death?

Answer. No.

Question. How long did you know Marie Scipion from first to last?

Answer. about ten years, but is not certain.

Question. When did Mr. Tayon die?

Answer. She does not know, but has not seen him for twenty years.

Question. Do you know what became of Scipion after Mr. Tayon's death?

Answer. Does not remember, but knew her as the slave of Mr. Tayon.

JULIE PAPIN VASQUES.

ELIZABETH HORTIZ.

Elizabeth Hortiz sworn: I knew Marie Scipion, as a slave of Mr. Joseph Tayon, thirty-eight or thirty-nine years ago; a very dark mulatress; saw her frequently, as she was hired out by Mr. Tayon as a slave; knew her until her death, about twenty years ago, always as the slave of Mr. Tayon; had the hair of a mulatress; she had three children, Catiche, Celeste, Lourie, as she was called, Margarette, her real name. Marie Scipion was always publicly known as the slave of Mr. Tayon.

Cross examination by plaintiff's attorney. Question. Which died first Mr. Tayon or Scipion?

Answer. Scipion.

Question. How many years before Mr. Tayon?

Answer. One or two.

Question. Did Scipion live with Mr. Tayon at the time of his death?

Answer. She died with her master at Pierre Chouteau's, senior.

Question. Did you know the father or mother of Scipion?

Answer. No.

Question. Did you know, of your own knowledge, that Scipion was the slave of Mr. Tayon?

Answer. Yes; always saw her serve in his house or hired out, as his slave.

Question. Marie Scipion, had she no nick name?

Answer. No; never heard any other than Marie Scipion.

Question. Do you know that Marie Scipion was mother of Celeste, Catiche, and Lourie?

Answer. Yes; they always called her mother.

Question. How do you know that Lourie is Margaret?

Answer. She has heard her called Margaret, and baptised, as was said, by that name.

Question. Was Scipion not reserved at the sale of Mr. Tayon, and also her children?

Answer. She knows nothing of it.

her
ELIZABETH ⋈ HORTIZ.
mark

MADAME TAYON.

Marianne Tayon, widow of Etienne Daigle, answereth and saith:

Question on the part of the defendant. Did you know Marie Scipion?

Answer. Yes.

Question by same. How long since you first knew her?

Answer. About fifty-two or three years ago, before I left this country.

Question by same. Where was Marie Scipion then, and what was her condition?

She was at my father's, and she was a slave.

Question by same. How long had you been acquainted with Marie Scipion before you left this country?

Answer. I knew her from infancy, and until I left the country; I was about seventeen when I left the country.

Question by same. Did you know Marie Scipion a slave all the time; by whom was she held as a slave?

Answer. I did; she lived in my father's family, by whom she was held as a slave all that time.

Question by same. Did you know Marie Scipion's mother?

Answer. No.

Question by same. Who were reputed to be mother and father of Scipion in the family of Joseph Tayon, and among the acquaintances of Marie Scipion?

Answer. I always understood that the mother was a negresse, and the father an Indian.

Question by same. Under the former government of this country, were Indians held us slaves in any instances?

Answer. All those who had Indians held them as slaves; an order was afterwards made by Government forbidding the further introduction of Indians as slaves.

Question by same. Were any Indians held as slaves in Opelousas, at the time that you moved to that country?

Answer. I knew several females of Indians held as slaves; that among the rest was a family held as slaves by a Mr. Mutien; they sued for their freedom and failed in obtaining it.

Question by attorney for plaintiffs. What was the name of the reputed father of Marie Scipion?

Answer. I understood his name was Scipion.

V. DAIGLY.

SEBASTIAN PRATT.

Sebastian Pratt deposeth and saith: He arrived in 1756 in the country, and in 1757 went to FortChartres. He lived with Mr. T ayon, Joseph Tayon, the father-in-law of Mr. Pierre Chouteau, sen. While he lived with Mr. Tayon he observed the slaves of Mr. Tayon in the first year of his residence: he had a negro woman called Marie, one Indian woman called Marie Louise; the Indian had two children; there was one slave also, a female, called Scipion, who appeared to be about ten or eleven years old, she was treated, and well known as a slave; he knew her in the possession of Mr. Tayon after he removed to St. Louis, and for several years after, and he had no other slave by that name but her; did not know the mother of Scipion; there were at Fort Chartres, and elswhere through the country, a great many Indian slaves, and but few blacks; the Indians were universally acknowledged as slaves, and frequently sold as such before the Governor; he himself sold several, one to the commandant, that he brought from the Mississippi. Scipion was very black, had hair like a gruffe; the commandant he speaks of was the English commandant at Kaskaskia. From his belief of the character of Mr. Tayon, he is certain he would not have held a person as a slave, who was not so; he was in the habit of frequenting Mr. Tayon's house at Fort Chartres, and a long time after, in St. Louis, and never heard Mr. Tayon say Scipion was free, but on the contrary, she was always treated as a slave. A majority of the Indians, held then as slaves, come down the Missouri, brought by the traders, and some were of different nations; there were many Indian slaves after the first establishment of St. Louis, and few blacks in it; Mr. Tayon removed to St. Louis soon after its establishment

S. PRATT.

MARGARET A. AMELIN.

Margaret Alexie Amelin deposeth and saith, that she was acquainted with Marie Scipion, the mother of Catiche, Lourie, and Celeste; that deponent knew said Marie Scipion when she was living with Mr. Tayon, senior, in the town of St. Louis; that deponent recollects said Marie Scipion about twenty-eight or twenty-five years since, at which time said Marie Scipion lived as a slave in the family of said Tayon; that deponent was told by said Marie Scipion, that the father of her, the said Marie Scipion, was a negro man named Scipion, and that the mother of said Marie was an Indian woman, who had been taken prisoner and reduced to slavery in the Natchez war in the time of the French; that the mother of Marie Scipion was taken for a slave in the time of war by the French people.

Cross examined by Mr. McGirk on behalf of plaintiff. Question. Did Marie Scipion tell you how she knew the above facts?

Answer. Marie Scipion did not say how she knew the above facts, but deponent supposes that she knew them from her mother.

Question. Were you well acquainted with Marie Scipion?

Answer. Yes; I knew her well; I saw her very often.

Question. How long ago has Mr. Tayon died?

Answer. About 17 years or more; is not certain how long.

How long ago since the death of Maria Scipion?

About 25 or 21 years ago; believes that Marie Scipion died at Mr. Pierre Chouteau's in St. Louis; deponent was not then in St. Louis; does not know when Marie Scipion was born; Marie Scipion never told witness when she was born; witness is about forty years of age, perhaps more; witness was born in Cahokia, in Illinois; was about six or seven years old when witness removed to St. Louis from Cahokia.

Question. How long ago did Marie Scipion tell you, who were her mother and father, and that her mother was taken by the French?

Answer. Witness does not exactly recollect how long ago Marie Scipion told witness; believes that Marie Scipion told her so about 3 or 4 years after witness first knew Marie; believes it to have been about 28 or 29 years ago.

her
MARGUERITE ALEXIS ⋊ AMELIN.
mark

JOHN TAYON.

John Tayon, a witness on the part of the defendant, testified, that he is the son of Joseph Tayon, deceased; is now seventy-three years of age; that he knew Marie Scipion, the slave of his father, from his earliest recollection to the time of her death; she was black, her hair like that of other negroes; did not know, nor does he remember to have heard, who were the parents of said Marie Scipion.

INSTRUCTIONS.

No other evidence being given, the defendant, by his counsel, moved the court to instruct the jury, as follows:

1st. If the jury find, from the evidence, that the mother of Marie Scipion was an Indian woman of the Natchez nation, taken captive in war by the French, and that she and her descendants were publicly and notoriously held as slaves, in the province of Louisiana, while the same was held by the French, prior to 1769, and that she and her descendants were so publicly and notoriously held as slaves, without interruption in the said province, until the 30th April, 1830, and thence to the time of the commencement of this suit, the jury ought to find for the defendant.

2d. If the jury find, from the evidence, that the mother of Marie Scipion was an Indian woman, taken captive in war, and reduced to slavery by the French, and that from the time of her capture, she and her descendants were publicly and notoriously held as slaves, in the province of Louisiana, while the same was held by the French, before the year 1769, and afterwards while the same province was in

the possession of, and held by Spain and France, until the 30th day of April, 1303, and thence until the commencement of this suit, they ought to find for the defendant.

3d. That Indians taken captive in war by the French might lawfully be reduced to, and held in slavery in the province of Louisiana while it was held by the crown of France.

4th. If the jury find, from the evidence, that the mother of Marie Scipion, that the said Marie Scipion was born while her mother was so held in slavery within the province of Louisiana, while the same was held by the French prior to the year 1769; that the said Marie Scipion was held in slavery in the province of Louisiana, from the time of her birth until the 30th April, 1803, and thence until the time of her death, then the jury ought to find for the defendant.

5th. If the jury find, from the evidence, that Marie Scipion was born while her mother was held in slavery, and that she, the said Marie Scipion, was publicly and notoriously held as a slave, from the time of her birth until her death, within the territory ceded to the United States, by the treaty between the United States of America and the French Republic, bearing date the 30th April, 1803, and that at the date of the said treaty the said Marie Scipion was so held as a slave within said ceded territory by an inhabitant thereof, then the jury ought to find for the defendant.

Which instructions the court refused to give, and to the opinion of the court in refusing said instructions the defendant excepts, and prays the court to sign and seal this his bill of exceptions, which is done accordingly, this 10th November, 1836.

WILLIAM SCOTT. [SEAL.]

APPEAL.

And thereupon, the said defendant filed his affidavit, and prayed an appeal to the Supreme Court, which was granted, and the said Pierre Chouteau, defendant, as principal, and Julius de Mume and Henry G. Soulard, as securities, who were approved by the court, acknowledged themselves indebted to the said Margaret, the plaintiff, in the sum of two hundred and fifty dollars of their respective goods and chattels, lands and tenements, to be levied, and to the said Margaret to be rendered.

Nevertheless, this recognizance is to be void, if the said Pierre Chouteau, senior, the appellant, shall prosecute his said appeal, with due diligence, to a decision in the Supreme Court, and if the judgment appealed from is affirmed, or his said appeal dismissed, he shall pay whatever of debt, damages, and costs have been recovered against him by the judgment of the circuit court, together with the interest that shall grow due thereon, or shall otherwise perform the judgment of the circuit court, and shall also pay the costs and damages that may be adjudged against him in the Supreme Court, upon his said appeal, otherwise to remain in full force; and of this they severally acknowledge themselves content.

Be it remembered, that upon the trial of this cause, the defendant,

by his attorney, asked the court to give certain instructions to the jury, which the court refused to do, to which opinion of the court, in refusing said instructions, the defendant excepts, and prays his bill of exceptions may be signed, sealed, and enrolled, and made a part of the record, which is done accordingly.

Which said affidavit is in the words and figures following, to wit:

AFFIDAVIT.

Margaret vs. Pierre Chouteau, suit for freedom in Jefferson circuit court; Catiche, alias Catharine, vs. same; Helen vs. same; Baptiste vs. same; Julie vs. same.

Pierre Chouteau, the defendant in the above entitled causes, prays an appeal in each of the said causes, and makes oath that his said appeal is not made of mere vexation and delay, but because he, the said affiant, believes that he is aggrieved by the judgment and decision of the court, in the said causes, and each of them. Sworn to in open court.

P. CHOUTEAU.

STATE OF MISSOURI, *County of St. Louis, ss.*

I, Henry P. Bates, clerk of the circuit court, within and for the county of Jefferson aforesaid, do certify that the foregoing is a full, true, and perfect transcript of the record and proceedings, in the case of Margaret against Pierre Chouteau, senior, as they now remain in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and the seal of said court, this 26th day of April, 1837.

HENRY P. BATES,
Clerk.

And afterwards, to wit, on the second Monday, being the 13th day of June, in the year 1837, the following assignment of errors was filed in the office of the clerk of the said supreme court of of the State of Missouri, then in session, to wit:

ASSIGNMENT OF ERRORS.

"Pierre Chouteau vs. Margaret; in the supreme court, 3d district, June term, 1837.

And now, at this day, comes the appellant, and says, that in the record and proceedings aforesaid, as also in the giving the judgment aforesaid, there is manifest error in this; that the said judgment was given for the appellee, when, by the law of the land, the said judgment ought to have been given in favor of the appellant; and in this, that

the court refused instructions to the jury, on the trial of the issue, which, according to the law of the land, ought to have been given as prayed for. Wherefore, for the errors aforesaid, and others, manifestly appearing in the record and proceedings as aforesaid, the appellant prays that the judgment aforesaid, in form aforesaid, rendered, be reversed, annulled, and for nought held and esteemed, and that a new trial be awarded.

GEYER,
For appellant.

There is no error.

H. R. GAMBLE,
For appellee."

And afterwards, to wit, on the 20th day of June, in the year aforesaid, the following proceedings were had in said court, to wit:

"Pierre Chouteau vs. Margaret; appeal from Jefferson circuit court. Now, at this day, come the parties atoresaid, by their respective attorneys, and thereupon, all and singular, the premises are by them submitted to the court, who not being sufficiently advised what judgment to render, take time to consider thereof."

And afterwards, to wit, on the 26th day of the month, and year last aforesaid, the following further proceedings were had in said cause, to wit:

JUDGMENT OF SUPREME COURT.

"Pierre Chouteau, appellant, vs. Margaret, appellee; appeal from Jefferson circuit court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of, and concerning the premises, do consider and adjudge, that the judgment aforesaid, in form aforesaid, by the said circuit court rendered, be in all things affirmed and stand in full force. And it is further considered, that the said appellee recover of the said appellant, and of Julius de Mun and Henry G. Soulard, his securities in the appeal bond, her costs and charges, by her about her defence, in this behalf expended, and have thereof execution.

STATE OF MISSOURI, 3*d Judicial District, ss.*

I, John Ruland, clerk of the supreme court, within and for the third judicial district of the State of Missouri, certify the foregoing to be a full, true, and perfect transcript of the record and proceedings in the cause of Pierre Chouteau, senior, appellant vs. Margaret, appellee, as the same now remain in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and

affixed the seal of said court, at my office, in the city of St. Louis, this twenty-seventh day of November, in the year of our Lord eighteen hundred and thirty-seven.

JNO. RULAND,
Clerk.

UNITED STATES OF AMERICA, *sct.*

The President of the United States to the Judges of the Supreme Court of the State of Missouri, being the highest court of law or equity in said State of Missouri, *greeting:*

Because, in the record and proceedings, and also in the rendition of a judgment of a plea, which is in the said supreme court of the the State of Missouri, before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit, between Marguerite, appellant, and Pierre Chouteau, appellee; wherein is drawn in question the construction of treaties, and the decision is agaist the right claimed under such treaties; a manifest error hath happened, to the great damage of the said appellee, as aforesaid, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgement be therein given, that then, under you seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the second Monday of January next, at the city of Washington, the present seat of the National Government; that the record and proceedings aforesaid, being inspected, the said Supreme Court, may cause further to be done therein to correct that error, what of right, and acccording to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, this twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued at office, in the city of St. Louis, under the seal of the circuit court of the United States, for the eight circuit and district of Missouri, the day and year last aforesaid.

JOSEPH GAMBLE,
Clk. U. S. C. C.

STATE OF MISSOURI—*Third Judicial District, ss.*

I, John Ruland, clerk of the supreme court, within and for the third judicial district of the State of Missouri, (being the highest court of law or equity in said State) in obedience to the within writ, have made out, and herewith transmit a full transcript of the record and proceedings, as within commanded.

Given under my hand and the seal of said court, at office, in the city of St. Louis, this fourth day of December, eighteen hundred and thirty-seven.

[SEAL.] JNO. RULAND,
Clerk.

DISTRICT OF MISSOURI, *sct.*

The President of the United States of America to Margueritte, a person of color, *greeting:*

You are hereby cited and admonished, to appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next, pursuant to a writ of error, issued out of the office of the clerk of the circuit court of the United States, for the district of Missouri, and directed to the judges of the supreme court of the State of Missouri; wherein Pierre Chouteau is plaintiff in error, and you, the said Marguerette, are defendant in error, to show cause, if any there be, why the judgment rendered against the said Pierre Chouteau, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Matthias McGirk, presiding judge of the supreme court, of the State of Missouri aforesaid, this 11th day of December, A. D. 1837.

MATHIAS McGIRK.

I do hereby certify that I served the within citation on the within named Margureite, by reading the same to her, on the sixteenth day of December, 1837, in the city and county of Saint Louis, in the State of Missouri.

JAMES BROTHERTON,
Sheriff.

By M. BROTHERTON,
D. Shff.

MISSOURI DISTRICT, *sct.*

This day personally appeared Marshall Brotherton, deputy sheriff, under James Brotherton, sheriff of St. Louis county, before me, Wilson Primm, commissioner for taking affidavits within said district, and made oath, that the facts stated in the foregoing return, are true.

M. BROTHERTON.

Sworn to, and subscribed before me, this sixteenth day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

WILSON PRIMM.

Know all men by these presents, that we, Pierre Chouteau and John Baptiste Sarpy, are held and firmly bound unto Margueritte, (a person of color) in the just and full sum of two thousand dollars, lawful money of the United States, to be paid to the said Margueritte, her heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, this ninth day of December, 1837.

Whereas, lately at a supreme court for the third judicial district of the State of Missouri, in a suit depending in said court, wherein said Pierre Chouteau was plaintiff, and the said Margueritte defendant; judgment was rendered against the said Chouteau, and he, the said Chouteau, has sued out a writ of error to remove the said cause to the Supreme Court of the United States, to reverse the said judgment.

Now, the condition of the above obligation is such, that if the said Chouteau shall prosecute his said writ of error to effect, and answer all damages and costs, if he make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

PRE. CHOUTEAU. [SEAL.]
JOHN B. SARPY. [SEAL.]

Test:
M. P. REDUC, Jr.

STATE OF MISSOURI—*Montgomery County, ss. Dec. 11th*, 1837.

I approve the foregoing bond and security.

MATHIAS McGIRK,
Presiding Judge of the Supreme Court of the State of Missouri.

1135

SUPREME COURT OF THE UNITED STATES.

No. 50.

JAMES GALLOWAY, Jr., APPELLANT,

VERSUS

HENRY H. FINLEY, & DAVID BARR.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR WEST POINT.

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6811.

In the circuit court of the United States, for the western district of Pennsylvania, of the third circuit.

CRAFT.—BURKE & METCALF.—OCTOBER 14, 1835.—FETTERMAN.

[No. 10.]

October Term, 1835.

JAMES GALLOWAY, jr. a citizen of the State of Ohio, *vs.* HENRY HEATH FINDLEY & DAVID BARR, citizens of the State of Pennsylvania.	Subpœna in equity, exit. October 10, 1835. Bill filed, 1835, October 19th. Subpoena returned, "served by copy, &c." 13th Oct. 1835.

1836. Jan. 21st. Answer of respondent filed.
1836. October 18th. On motion of Mr. Fetterman, rule to reply, (copy.)
1636. Dec. 5th. Rule returned, served by copy on Mr. Craft, plaintiff's attorney, Dec. 5th, 1836.
1837. February 6th. On motion of Mr. Fetterman, non. pros.
1837. February 13th. Amended bill filed. By consent, non. pros. taken off, and May 26th, 1837, argued by Mr. Craft, for the plaintiff, and Mr. Metcalf for the defendants.
1337. May 30th. Opinion of the court delivered by Judge Baldwin. Bill dismissed with costs. Mr. Craft appeals. Appeal allowed; bond in $400.

To the honorable Thomas Irwin, Esquire, judge of the district court of the United States, in and for the western district of Pennsylvania,

IN EQUITY.

Humbly complaining, showeth your orator James Galloway, junior, of Greene county, in the State of Ohio:

That on the eleventh day of March, in the year of our Lord, one thousand eight hundred and thirty-five, at his residence in the town of Xenia, in the State of Ohio aforesaid, the said James Galloway, junior, a citizen of the said State, concluded a certain article of agreement with Henry H. Finley and David Barr, citizens of the State of Pennsylvania, the said David Barr also acting as attorney in fact for Elizabeth Julia Ann Barr, also a citizen of the said last mentioned State, and thereby making her a party to said article of agreement, she being also the wife of said David Barr, which said article of agreement set forth, that, whereas, Charles Bradford, late of Washington county, State of Pennsylvania, obtained for his services as an officer in the revolutionary war, in the Virginia continental line, a land warrant for 2666 1-3 acres, No. 4467, which warrant was located, surveyed, and patented in three surveys, between the Little Miama and Sciota rivers, in the Virginia military district, now in the State of Ohio, to wit: one survey No. 2277 for 1000 acres; one survey, No. 2278 for 1200 acres, both in Greene county, State of Ohio; and the other survey No. 4456 for 466 2-3 acres, in Brown county, State aforesaid; and whereas, the said Charles Bradford died intestate, leaving four surviving children, to wit, Henry G. Bradford, Charles A. H. Bradford, Fielding M. Bradford, and Elizabeth Juliana Bradford, of whom Henry G. Bradford, and Charles A. H. Bradford died intestate, and without issue, leaving Fielding M. Bradford, and Elizabeth Julia Ann Bradford, the only surviving heirs of the said Charles Bradford, deceased; and the said Elizabeth Julia Ann Bradford intermarried with John Finley, and afterwards died intestate, leaving two children, to wit, Henry Heath Finley, and Elizabeth Julia Ann Finley, who are the only heirs and legal representatives of their deceased mother aforesaid, and are thereby entitled, in right of their mother, to one equal undivided moiety of the above described lands of the said Charles Bradford, deceased.

Now these presents witnesseth: that the above named Henry Heath Finley, and David Barr, and Elizabeth Julia Ann, his wife, (late Elizabeth Julia Ann Finley,) heirs and legal representatives of the said Charles Bradford, deceased, of the county of Washington and State of Pennsylvania, have this day sold unto James Galloway, jr. of the town of Xenia, county of Green, and State of Ohio, one equal undivided moiety of the two surveys first abovementioned, to wit, of survey No. 2277, for 1000 acres; and of survey No. 2278, for 1200 acres, in consideration whereof, the said Galloway has agreed

to pay them the sum of eight thousand dollars, one thousand of which he has this day paid in hand, the receipt whereof is hereby acknowledged, and for the balance of said purchase money the said Galloway has given to the said Henry Heath Finley, and David Barr, and Elizabeth Julia Ann, his wife, his four several notes of hand, payable at the Franklin Bank of Columbus, to wit, one note for $2000 due the first day of January next; one note for $1666 2-3, due the first day of January, 1837; one note for $1666 2-3, due the first of January, 1838, and the other note for $1666 2-3, due the first day of January, 1839. And the said Henry Heath Finley, David Barr, and Elizabeth Julia Ann, his wife, do hereby covenant, and agree to and with the said James Galloway, junior, that they are the persons whom they have herein represented themselves to be, and that they are seized and possessed of a good and sufficient legal title to the premises hereby stated to be sold by them to the said James Galloway, jr. and hereby bind themselves, their heirs, executors, &c. to execute and deliver to the said James Galloway, jr. his heirs or assigns, a good and sufficient title, in fee simple, to the said premises hereby sold to him, as soon as he shall have made full payment of the purchase money aforesaid.

In witness whereof, the said Henry Heath Finley, and David Barr, and Elizabeth Julia Ann, his wife, have hereunto set their hands and seals, at Xenia, in the county of Greene, and State of Ohio, this 11th day of March, A. D. 1835.

(Signed)

HENRY H. FINLEY. [SEAL.]
DAVID BARR. [SEAL.]
ELIZABETH JULIA ANN BARR, [SEAL.]
By DAVID BARR,
Her attorney in fact.

Sealed and delivered in presence of us,
ROBERT FINLEY,
ROBERT NESBIT.

And the said James Galloway, jr. further sets forth to your honor, that at the time of making the foregoing article of agreement, the said Henry Heath Finley, and David Barr, represented and asserted to the said James Galloway, junior, that they had in their possession the papers and other evidences of the right and title of the said Finley and Elizabeth Julia Ann Barr to the land in said article of agreement mentioned, in right of their mother, deceased, as set forth in said article, and the said Henry Heath Finley, and David Barr, also at the same time represented and set forth to the said James Galloway, that a letter of attorney, duly acknowledged and authenticated, had been signed and executed by the said Elizabeth Julia Ann Barr, authorizing her said husband, David Barr, to sell and convey all her interest and title in the foregoing lands, which said title papers, and other evidences of title, and said letter of attorney from said Eliza-

beth Julia Ann Barr to David Barr, they had only then discovered they had not brought with them from Washington county, in the State of Pennsylvania, believing, as they pretended, that up to the time of signing said article of agreement, they were in their possession with them; and the said Finley and Barr, to induce and persuade your orator to conclude the said agreement abovementioned, and to pay the first instalment therein mentioned, promised to forward the said title papers, and other evidences of title, and the said letter of attorney from Elizabeth Julia Ann Barr to David Barr, to him the said James Galloway, jr. at Xenia, Ohio, as soon as they, the said Henry Heath Finley and David Barr, should return home to their place of residence, in the said State of Pennsylvania; in confidence whereof, and in the belief that the said title papers, and evidences of title, and the said letter of attorney, were in existence, and would be produced and forwarded by the said Henry Heath Finley and David Barr, according to their respective promises, the said James Galloway, jr. agreed to conclude, and did conclude the articles of agreement above recited.

And the said James Galloway, jr. further represents, that on the day of the date of the said agreement, he not only paid the sum of one thousand dollars to the said Henry H. Finley and David Barr, as is acknowled by them in the said agreement, but having advanced for them the said Finley and Barr, the further sum of one hundred and four dollars, in payment of taxes due by them on another survey of land, claimed by them in the name of Charles Bradford, in Brown county, Ohio: the said payment of one hundred and four dollars was admitted by the said Finley and Barr, as a credit on account of the purchase money, due on said agreement, and accordingly endorsed on the last of the aforesaid notes as a payment of so much due thereon.

Your orator further sets forth, that since the day of the date of the foregoing article of agreement, Elizabeth Julia Ann Barr, wife of the said David Barr, has deceased, being, at the time of her death, a minor, and leaving no issue, nor any last will and testament.

And your orator further showeth, that having made the aforesaid payments upon the faith of the foregoing article of agreement, and the covenants therein contained for making a good and sufficient title to the said lands, your orator well hoped he should have quietly and peaceably held and enjoyed the same, and that the said Henry H. Finley, David Barr, and Elizabeth Julia Ann his wife, being seized and possessed of a good and sufficient title to the said premises, would have been able to convey the same to him upon *upon* the full payment to them of the purchase money in said article mentioned. *But now so it is*, that the said Henry H. Finley and David Barr, combining and confederating together, and with divers other persons, unknown to your orator, whose names when discovered your orator prays may be inserted herein, with apt words to charge them as parties, and contriving to obtain the moneys of your orator without valuable consideration for the same, and to disappoint him of the said land, and of all benefit of the said articles of agreement, have not

produced or forwarded the title papers, and other evidences of title, by them represented to be in their possession, showing the right of the said Henry H. Finley and Elizabeth Julia Ann Barr to the land described in the said articles of agreement, nor produced or forwarded the letter of attorney from Elizabeth Julia Ann Barr to David Barr, whereby it should be made manifest that the said David Barr had any authority to sell the interest of his wife in the land, altho' often requested by your orator to produce or forward as aforesaid, said papers, &c.

And your orator, the said James Galloway, further shows, that the said Henry Heath Finley and David Barr, or the said Elizabeth Julia Ann Barr, claiming the said land, in the right and by the title they have represented themselves to be seized or possessed of, by from, through, or under the said Charles Bradford, cannot comply with the said article of agreement, nor make a good and sufficient title to your orator for the lands which they have covenanted to convey to him in fee, because your orator has ascertained that the said Charles Bradford died in Washington county, in the State of Pennsylvania, in the year 1789; the proof of his last will and testament in the register's office of said county, bearing date the 27th of October, in said year; and that the lands sold, or pretended to be sold to your said orator, were entered in the name of the said Charles Bradford, in the office of Richard C. Anderson, of the State of Kentucky, on the 19th of April, 1793, and the survey of the tract of 1000 acres was made on the 14th of February, A. D. 1794, and the survey of the tract of 1200 acres was made on the 24th of March, 1794; the entry and surveys being about four years after the death of the said Bradford. That these entries and surveys thereon in the name of a deceased person, could give no right or title in the name of the said Bradford, or any person or persons claiming under him; but, on the contrary, is a gross imposition and fraud, both in the inception of the title, and the manner in which the same was passed, by false pretences, concealment and deception upon your orator; all which doings, actings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In *tender consideration whereof*, and for that your orator is utterly remediless by the strict rules of the common law, and cannot have a discovery of the truth of the several matters aforesaid, but by the oath of the said Henry H. Finley and David Barr, and cannot have the production of the title papers, and other evidences of title, nor the letter of attorney of the said Elizabeth Julia Ann Barr to the said David Barr, and further relief in the premises which your orator seeks hereafter, without the aid and assistance of a court of equity, where matters of this nature are properly cognizable, and relievable. *To the end therefore*, that the said Henry H. Finley and the said David Barr, may upon their corporal oaths, full, true, distinct, and perfect answers make, to all and singular, the matters and things herein before set forth, as fully and particularly as if the same were here again repeated and interrogated, and more especially, what are

the condition and circumstances attending the entry and survey of the said Charles Bradford under, whom they claim, setting forth the whole chain of title, with all its incidents, together with the power of attorney alleged to have been executed by the said Elizabeth Julia Ann Barr; or that upon failure thereof the said articles of agreement may be deemed by your honor to be annulled and cancelled, the moneys hereinbefore set forth to have been paid by your orator, to be refunded, with lawful interest thereon, during the period for which it has been unjustly and inequitably withheld, and that the said notes of hand given by your orator may be enjoined, and the collection of them by process at law, or otherwise, restrained; and the same cancelled, and delivered up; and that your orator, (who has been always, and remains ready and willing, and doth hereby offer to perform and execute every thing in the said articles of agreement contained, on his part, to be done and performed,) may receive such further and other relief in the premises as the nature of the case requires, and as shall be agreeable to equity and good conscience. May it please your honor to issue your writ of subpœna, to be directed to the said Henry H. Finley and David Barr, and their confederates, when discovered, commanding them, (and every of them,) personally to be and appear before you in this court, then and there, upon their respective corporal oaths, true and perfect answer to make, to all and singular the premises; and further to grant and abide such order and decree therein as to your honor may seem meet, &c.

And your orator shall ever pray, &c.

JAMES G. CRAFT,
Solicitor for orator.

The bill, and the following præcipé filed Oct. 10, 1835.

WESTERN DISTRICT OF PENNSYLVANIA.

JAMES GALLOWAY, jr. a citizen of the State of Ohio,
vs.
HENRY HEATH FINLEY, and DAVID BARR, citizens of the State of Pennsylvania.

Issue.
Subpœna in chancery.

Returnable to the next term.

JAMES G. CRAFT,
Solicitor for plaintiff.

Oct. 9, 1835.
EDWD. J. ROBERTS, Esq.
Clerk.

[SUBPOENA.]

UNITED STATES, *Western District of Pennsylvania, sct.*

The President of the United States to Henry Heath Finley and David Barr, citizens of Pennsylvania.

For certain causes offered before the district court of the United States, in and for the western district of Pennsylvania, in a certain bill of complaint exhibited against you by James Galloway, jr. a citizen of the State of Ohio, we command and strictly enjoin you and each of you that, laying all other matters aside, and notwithstanding any excuse, you or each of you may have, personally be and appear before the judge of the said court, at a session of the same court, to be holden at Pittsburgh on the third Monday of October, present, to answer concerning those things, which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf; and have you then there this writ. And this you are in no wise to omit, under the penalty of four hundred dollars.

Witness the honorable Thomas Irwin, judge of the United States, in and for the district aforesaid, at Pittsburgh, this fourth day of May, A. D. 1835, and in the fifty-ninth year of the independence of the said United States.

[SEAL.] E. J. ROBERTS, *Clerk.*

I, John M. Davis, marshal of the western district of Pennsylvania, do hereby authorize and appoint Thomas Baird, Esq. to execute the within writ. Given under my hand and seal this 12th day of October, 1835.

JOHN M. DAVIS, [SEAL.]
Marshal.

[ENDORSED.]

No. 10.—*Of October Term*, 1835.

JAMES GALLOWAY, jr. a citizen of Ohio, *vs.* HENRY HEATH FINLEY and DAVID BARR, citizens of Pennsylvania.	Subpœna in Equity, served by copy left at the residence of defendants, 13th October, 1835.

So answers Thomas Baird, John M. Davis, Ml. Marshal's fees $5 83.

DISTRICT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. 10.—*Of October Term*, 1835.

HENRY HEATH FINLEY and DAVID BARR, citizens of the State of Pennsylvania, *ads.* JAMES GALLOWAY, a citizen of the State of Ohio.	In Chancery.

The joint answers of Henry Heath Finley and David Barr, above named defendants.

The said respondents, saving and reserving to themselves now, and at all times hereafter, all manner of advantage and benefit of exceptions, that may be had and taken to the many untruths, uncertainties, insufficiencies, and imperfections, in the complainant's bill of complaint contained, for a full and perfect answer thereunto, or to so much thereof as it materially concerns these respondents to make answers unto, answer and say, that true it is that, on the 11th day of March, 1835, these respondents entered into an article of agreement with said complainant, of the tenor and effect set forth by said complainant in his bill of complaint, executed in the manner alleged by said complainant in said bill of complaint. And true it is, that the time of entering into said agreement by these respondents, with said complainant, these respondents did represent to said complainant that the respondent, Henry H. Finley and Elizabeth Julia Ann Barr, wife of the respondent, David Barr, were the children and sole heirs of the said Elizabeth Julia Ann Finley, daughter of Charles Bradford, late of Washington county, Pennsylvania, deceased; and as such they believed said Henry H. Finley and Elizabeth Julia Ann Barr were legally entitled to the undivided moiety of the lands sold and agreed to be conveyed by these respondents to said complainant. And true it is, that at the time of entering into the agreement aforesaid, these respondents did represent and assert to said complainant that they

had in Washington county, Pennsylvania, evidence that the said Henry H. Finley and Elizabeth Julia Ann Barr, were the children and heirs of the said Elizabeth Julia Ann Finley, all which representations and assertions these respondents allege to be true, and will prove them to be so. But these respondents deny that at the time of entering into the article of agreement aforesaid, or at any other time, they represented to said complainant that they had in their possession any title papers, or evidence of title to the lands mentioned in said agreement, other than the evidence aforesaid, that the said Henry H. Finley and Elizabeth Julia Ann Barr, were the children and sole heirs of the said Elizabeth Julia Ann Finley; on the contrary thereof, these respondents allege that they stated to said complainant at the time of entering into the agreement aforesaid, that they had no title papers, and that they had but then recently learned from report, that such lands were in existence, and that the said Henry H. Finley and Julia Ann Barr had any interest in, or title to, said lands; and that said complainant then told these respondents, that he had long known that the children and heirs of the said Elizabeth Julia Ann Finley were entitled to an undivided moiety of said lands, that he had a record of their names, and had been making inquiries for them, and had never been able to find out where they resided; that having a short time previously heard that the respondent, Henry H. Finley, was down the river Ohio and would be at Cincinnati on his return, he had directed his, the complainant's son, to make inquiries for said respondents at Cincinnati, and if he met with him to send him to said complainant, or let said complainant know of his, said respondent's being at Cincinnati; that he, said complainant, had been anxious to see said respondent, H. H. Finley, and buy his interest in said land, as he, said complainant, had sold said lands and bound himself to give good titles, and he feared some other persons, especially one Taylor of Kentucky, would hear of and purchase the interest of the said Henry H. Finley and his sister, and give him trouble. At the same time the complainant opened a book which he has, and showed these respondents the names of the said Henry H. Finley and his sister, Elizabeth Julia Ann, which said complainant alleged he had procured and recorded many years before, intending then to seek them out and purchase their title; all which statements and allegations of said complainant these respondents are able amply to prove; and these respondents, further allege, and will prove, that said complainant stated at the time of entering into the agreement aforesaid, that he, said complainant, knew all about the title to said lands, and that if said respondents, Henry H. Finley and Elizabeth Julia Ann Barr, were the children of the said Elizabeth Julia Ann Finley, he was satisfied as to their right and title to said lands. These respondents admit that they agreed to forward to said complainant, on their return to Pennsylvania, the evidence that the said Henry H. Finley and Elizabeth Julia Ann Barr, were the children of the said Elizabeth Julia Ann Finley, and intended so to do, as was abundantly in their power, but the illness and death of the said Elizabeth Julia Ann Barr, shortly after, caused it to be neglected. The respondent, Henry H. Finley,

in said surveyor's office, these same lands under the surveys No. 2277 and No. 2278, in said agreement mentioned, as a certified copy of the entries made by the said complainant on the 26th day of Sept. 1835, aforesaid, under the hand and seal of office of the surveyor of said military district, will amply prove; which said certified copies of said entries these respondents file, and pray that the same may be taken as part of their answer to said bill of complaint. And these respondents aver, that said complainants having so entered said lands in further pursuance of his said fraudulent and iniquitous designs, immediately thereafter filed his bill of complaint without intimating to these respondents the slightest objection to their title to said lands, although the respondent, Henry H. Finley, had met and conversed with said complainant in the city of Pittsburgh on the subject of said lands, after the time of his so re-entering them as aforesaid, and before the filing of that, his bill of complaint; all which actings and doings these respondents allege to be contrary to equity and good conscience.

These respondents allege and will prove, that the lands mentioned in the agreement in said complainant's bill of complaint, as set forth were duly entered, surveyed and patented, in the name of the said Charles Bradford, by virtue whereof the said Henry H. Finley and Elizabeth Julia Ann Barr, his sister, at the time of the agreement aforesaid, with said complainant, were, as the children and heirs at law of the said Elizabeth Julia Ann Finley, deceased, daughter of the said Charles Bradford, deceased, equitably and justly entitled to the one undivided moiety of said lands, and being so entitled have good right and title to sell and convey the same. And that, by the death of the said Elizabeth Julia Ann Barr, a minor, without issue, all her right and title in and to said lands, became vested in the said Henry H. Finley, as the sole and only surviving heir of the said Elizabeth Julia Ann Finley, and being so equitably and justly entitled to the undivided moiety of said lands, the said Henry H. Finley, one of the respondents, avers his perfect power, readiness and willingness, to make and execute to the said complainant a good and perfect title to the undivided moiety of said lands, in fulfilment and discharge of the agreement entered into by the said David Barr and himself with said complainant, according to the terms and stipulations in said agreement contained, on the fulfilment of the same agreement by said complainant. These respondents therefore aver and will maintain, that any title which said complainant may have acquired in and to said lands, by his entry as aforesaid, on the 26th day of September, A. D. 1835, of right and in equity, shall be deemed and taken to enure to the benefit of these respondents, for whom said complainants holds the same, in trust for the fulfilment and completion of the contract and agreement, so as aforesaid made and entered into by and between these respondents and said complainant.

Wherefore these respondents pray that complainant's bill of complaint be dismissed, and they be discharged with their recoverable costs and charges in this behalf—most wrongfully and unjustly sustained.

A. METCALF, and
W. W. FETTERMAN,
Sols. pro. Resp.

COMMONWEALTH OF PENNSYLVANIA, *City of Pittsburgh, ss.*

Personally came before me, one of the Aldermen, in, and for said city of Pittsburgh, Henry H. Finley and David Barr, the respondents in foregoing case; who severally made oath, that the facts set forth in the foregoing answer, so far as they are stated to have come within their respective knowledge, are just and true; and so far as stated from information, they respectively believe them to be so; and that they have made full and perfect answer to complainant's bill of complaint, to the best of their knowledge and belief.

HENRY H. FINLEY.
DAVID BARR.

Sworn and subscribed before me, the 19th day of January 1836.
W. B. LOWRIE.

[ENDORSED.]

No. 10.—*October*, 1835.

HENRY H. FINLEY, and DAVID BARR, *against* JAMES GALLOWAY. } Answer of Respondent.

Filed January 21st, 1836.

In the district court of the United States, for the western district of Pennsylvania.

No. 10.—*of October Term*, 1835.

	CRAFT.—JAMES GALLOWAY, jr. a citizen of the State of Ohio. *vs.*	Subpœna in Equity.
Metcalf & Shaler, for Finley. Fetterman.	HENRY HEATH FINLEY, and DAVID BARR, citizens of the State of Pennsylvania.	

And now, to wit, October 18th 1836, on motion of Mr. Fetterman: Rule to reply,

[Copy] From the record.

[SEAL.] E. J. ROBERTS, *Clerk.*

[ENDORSED.]

No. 10.—*of October Term*, 1835.

JAMES GALLOWAY, jr. *vs.* FINLEY and BARR. } Rule to reply.

Served by copy on Mr. Craft, plaintiff's attorney.

JOHN M. DAVIS, *Marshal.*

October 5th, 1836 Marshal's fees, $2 50.

In the District Court of the United States, for the western district of Pennsylvania, No. 10. of October Term, 1836.

The amended bill of James Galloway, jr. a citizen and resident in the State of Ohio, against Henry Heath Finley and David Barr, citizens and residents in the State of Pennsylvania; the complainant and defendants being citizens and residents of different States, and not citizens and residents of the same State.

In addition to the facts already stated and set forth by your orator in his original bill, to which he refers, he states, that beside the money paid by your orator to the said defendants on account of the contract, he released to them by a quit-claim-deed, all his right and interest to one equal undivided half of survey, No. 4456, for four hundred and sixty-six and two-thirds acres, for the consideration of five hundred dollars, which survey is situate in the Virginia military district, in the State of Ohio.

Your orator further states, that at the time he entered into the contract with said defendants, he believed that they had a good and perfect title to the lands they sold him; that he was ignorant and uninformed of the fact, that the entries and surveys had been made in the name of a dead man, and that the patents had issued in the name of a man not in being; and it was not until a considerable time after entering into the contract, paying his money, executing his notes, and sealing a quit-claim to the defendants, or to David Barr one of them, for the said five hundred acres [466] above stated, that he come to the knowledge of the facts; that the lands they sold him were vacant and unappropriated, and that it was not in the power of the defendants to make him a title for the same; and that the lands they had sold to him were subject to entry, and might be appropriated by the owner and holder of any Virginia military land warrant. Having previously purchased an equal undivided half of these same lands, for which he had paid a large and valuable consideration.

Your orator under all the circumstances, deeming it right to protect his own interest in the premises, on the 26th day of September, A. D. 1835, caused two entries to be made in his own name, to wit, No. 13696, for twelve hundred and eight acres, and No. 13697, for one thousand acres in the office of the Surveyor of the Virginia military district, in the State of Ohio; and on the same day caused surveys to be executed and returned to said office, which were duly recorded on the 28th day of September, 1835, to an attested copy of which said entries and surveys marked A. your orator refers; and prays that the same may be taken and received as part of his amended bill.

Your orator states, and so charges the fact, that having entered and surveyed the lands aforesaid, which were at the time of such entry and survey, wholly vacant and unappropriated, he acquired and invested himself with the best and only right and title to said lands, as sanctioned by the Supreme Court of the United States, the Circuit Court of the United States, for the district of Ohio, the Supreme Court of the State of Ohio, and by the judicial decisions of all the States in the Union, where the question has arisen for adjudication.

In consideration of the premises, therefore, your orator prays your honor, that the defendants may be compelled to answer all the matters and things stated in this amended bill, fully and particularly.

Your orator prays your honor, as in his bill, to which this is an amendment, and if on the final hearing of this case, the court shall be of opinion that the defendants had no title to the land in controversy, when they entered into the contract with your orator, and that the lands were vacant and unappropriated until the same were entered by your orator; then your orator prays your honor by your decree, to cancel the said contract, and order and direct the payment of the moneys advanced to the said defendants, and also five hundred dollars, the consideration for the quit-claim-deed, made to the defendants, to be refunded and paid back to your orator, together with interest thereon, from the time the said money was paid, and the deed executed. And shall also order and decree the notes given by your orator with reference to this contract, to be delivered up and cancelled.

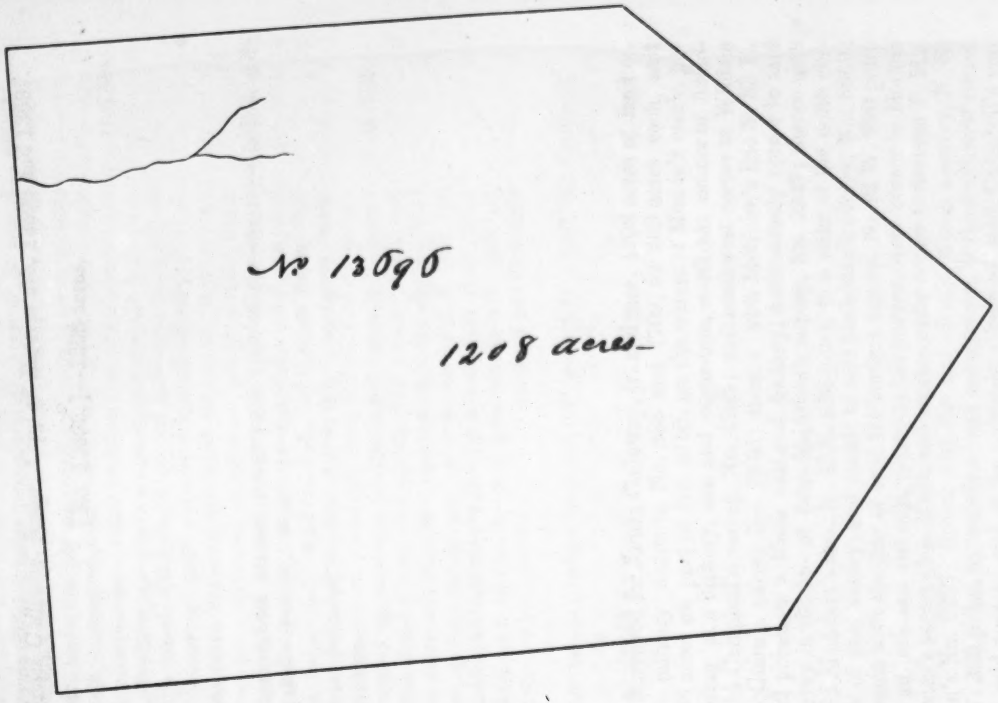
Or if upon a view of the whole case, it should appear to your honor, that the said defendants, or either of them, had at the time of the contract a good and perfect title to the land in question; and that they still have a good and perfect right and title to the same, and full authority to perfect their said agreement on their part, by a good and valid conveyance of the moiety they undertook to sell by said agreement; then, and in that case, your orator is ready, and, in that event, tenders the full and perfect completion of the contract, on his part; and that your honor will grant to your orator such other and further relief in the premises as be consonant with justice and equity, and meet the case of *of* your orator, &c.

JAMES S. CRAFT,
Solicitor for Plaintiff.

September 26th, 1835.

No. 13696.—James Galloway, jr. assignee, enters 1208 acres of land on two military warrants, No. 986 and 7709, and 808 acres on part of No. 3195, on the waters of Massie's creek; begining at the south-east corner of Archi-
487 D. bald Campbell's survey, No. 2265; thence with his line, N. 7 E. to his northeast corner; thence S. 83 E. to the west corner of survey No. 1560; thence S. 40 E. 290 poles to the north corner of survey No. 2247; thence S. 45 W. to the northeast corner of survey No. 1240; thence to the begining.

No. 13697.—James Galloway, jr. assignee, enters 1000 acres of land on four military warrants, No. 7395—7702, for 200 acres each; and No. 7707, and 7708, for 100 acres each; and 400 acres, part of No. 289, on the waters of Massie's creek, begining at the northeast
487 D. corner of survey, No. 2567, and southeast corner of No. 2265; thence with the line of survey of No. 2265, to the southeast corner thereof, and northwest to survey No. 1240; thence with the line of survey, No. 1240, S. 8 W. to the southeast corner thereof; thence N. 88½ W. to the east line of survey No. 2239; thence to the begining.


№ 13096
1208 acres

1145

James Galloway, jr. vs. *Henry H. Finley & David Barr.* ~~21~~

A.

James Galloway, junior, Copy of Surveys No. 13696 *and* 13697.

[No. 13696.]—1208 acres.

Surveyed for James Galloway, jr. assignee, 1208 acres of land on two military warrants, No. 986 and 7709, for 200 acres each, and 808 acres on part of No. 3195, on the waters of Mossie's creek, begining at a hickory, ash and sugar-tree, southeast corner of Archibald Campbell's survey, No. 2265; and northwest corner to William McGuire's survey No. 1240; thence with McGuire's line S. 83 E. 442 poles, to a black oak and hickory, northeasterly corner to said survey in the line of John McAdam's survey, No. 2247; thence with said McAdam's line, N. 45 E. 238 poles, to a stake at the north corner of said survey, and corner to said Galloway's survey, No. 8669; thence with the line of said Galloway's survey, N. 40 W. 290 poles to an ash and red oak, corner to his survey, west corner to Horatia Gates's surveys No. 1560, and southeasterly corner to Stevens T. Mason's No. 2267; thence with the line of said Mason's survey, N. 83 W. 380 poles, to two elms and a sugar-tree, at the southwest corner of said survey; and at the northeast corner of said Campbell's survey; thence with said Campbell's line, S. 7 W. 386 poles, crossing a branch, to the begining.

JAMES GALLOWAY, Jr. *D. S.*
September 26, 1835.
September 28, 1835.

JOHN GALLOWAY, }
ARCHIBALD COLLINS. } C. C.
SAMUEL STEWART, *Marker.*

[No. 13,697.]—1,000 acres.

Surveyed for James Galloway, Jr. assignee, 1,000 acres of land, on four military warrants, viz: No. 7,395 and 7,702, for 200 acres each, and No. 7,707 and 7,708, for 100 acres each, and 400 acres on part of No. 289, on the waters of Mossie's creek, beginning at a white oak and two hickories, northeast corner to Pamela and Penelope, Russell's survey, No. 2,567, and southwest corner to Archibald Campbell's survey, No. 2,265; thence with said Campbell's line S. 88½, E. 400 poles crossing old Town run to a hickory, ash and sugar tree, southeast corner to his survey, and northwest corner to William McGuire's survey, No. 1,240; thence with the line of said McGuire's survey, S. 8, W. 406 poles, crossing the run and crossing the road from Xenia to James town, to a large white oak, ash and sugar tree, southwest corner to his said survey, and in the line of William Croghan's survey, No. 3,912; thence with said Croghan's line N. 88½ W. 400 poles, to four small dogwoods, northwest corner to his said survey, and in the line of Warner's and Addison's, Lewis's surveys, No. 2,239; thence with the line of said Lewis's survey, passing their northeast corner, and with the line of Russell's said survey, N. 8, E. 406 poles, crossing said road and crossing a branch to the beginning.

JAMES GALLOWAY, *D. S.*

September, 26, 1835.

September, 28, 1835.

JOHN GALLOWAY, }
ARCIBALD COLLINS, } *C. C.*
SAMUEL STEWART, *Marker.*

SURVEYOR'S OFFICE,

For the Virginia military district in the State of Ohio.

I, Allen Latham, surveyor of said military district, do certify that the foregoing entries and surveys, to wit, No. 13,696 for 1208 acres of land, and No. 13,697, for 1,000 acres, in the name of James Gal- Jr. are correctly transcribed from the records of this office.

Given under my hand and seal of office, at Chillicothe, this
[SEAL.] 23d day of January, 1837, and the 61st year of the independence of the United States.

ALLEN LATHAM.

№ 13697
1000 acres

No. 10.—*October T.* 1836.

JAMES GALLOWAY, Jun. of Ohio,
vs.
HENRY H. FINDLEY and
DAVID BARR, of Penn.

Amended bill, &c. filed February 13, 1837.

March 13th, 1835, $104 13, credited on back of note, payable 1st January, 1839.

No. 10.—*October*, 1836.

DISTRICT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

JAMES GALLOWAY, Jr. a citizen of Ohio,
vs.
HENRY HEATH FINLEY and
DAVID BARR, of Pennsylvania.
} In chancery.

In this case it is agreed, that the dismissal of the original bill for want of replication, be set aside; that cause be restored to its original standing; and that the complainant be permitted to file his amended bill; and that in consideration thereof, the several answers of David Barr to the amended bill of complaint, shall be taken without any answer being required from said Henry Heath Finley, the other defendant; and that the cause shall be set for hearing at the May term, 1837, upon the bills and answers aforesaid filed.

FETTERMAN & METCALF,
Solicitors for defts.
J. S. CRAFT, *for plff.*

March 28th, 1837.

[ENDORSED.]

JAMES GALLOWAY JR.
vs.
HENRY HEATH FINLEY
and
DAVID BARR.

Agreement of solicitors' in the cause—Filed May 25, 1837.

DISTRICT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. 10.—Oct. T.—1836.

HENRY HEATH FINLEY and DAVID BARR, citizens of Pennsylvania,
ads.
JAMES GALLOWAY, a citizen of the State of Ohio.
} Amended bill in Chancery.

The several answers of David Barr, one of the above named defendants, to the amended bill of the complainant.

The said respondent saving and reserving to himself now and at all times hereafter, all manner of advantage and benefit of exceptions that may be had and taken, to the many untruths, uncertainties, insufficiencies, and imperfections, in the complainant's said amended bill of complaint contained for a full and perfect answer thereunto, or to such parts thereof as materially concerns this respondent to make answer unto, answers and says, that true it is that said complainant, did release by a quit claim deed, all his right and interest in one equal undivided half of survey, No. 4456, for four hundred and sixty-six acres, and two-thirds of an acre, situate in the Virginia military district, in the state of Ohio, and true it is that the consideration mentioned in said quit claim deed; from said complainant to this respondent, was five hundred dollars; but this respondent denies that five hundred dollars was the true and real consideration of said release by quit claim; and avers that one hundred and four dollars thirteen cents was the true and real consideration of such release, which latter sum was paid to the said complainants, by allowing him a credit for that amount on one of the notes given by said complainant to this respondent, and said Henry Heath Finley, mentioned by the complainant in his original bill of complaints, said note being the one falling due on the first of January, A. D. 1839. This respondent further avers, that at the time contracts mentioned by the complainant in his original bill of complaint was entered into, this respondent and the said Henry Heath Finley denied the claim which this complainant pretended to have to said survey, No. 4456, and sets up the entire right and title of the same to be in the said Henry Heath Finley, and the wife of this respondent, then living, and that in making and entering into the contract, in the complalnant's original bill of complaints mentioned, it was not taken into consideration, nor formed any part of the same, but that on the day following, the execution and consummation of said contract, on said complainants urging a claim to said survey, No. 4456, and that he ought to be allowed at least for the taxes he had paid upon the same, this respondent did agree, in consideration that the said complainant would release to this respondent, all right and title to the same, he, this respondent' would refund to said complainant the taxes which complainant had paid on the same, by allowing him a credit on the note aforesaid, which amount paid for

taxes said complainant alleges, be one hundred and four dollars, thirteen cents, a credit for which was given to said complainant on the note as aforesaid, and that sum constituted the sole and only consideration for the release aforesaid; and this respondent avers, that the sum of five hundred, was inserted in the deed of quit claim aforesaid, at the request of the complainant for the purpose as alleged by said complainant of inducing the wife of complainant to execute said deed of quit claim or release, as otherwise she might not be satisfied to sign it.

This respondent further answering, alleges that the transaction in relation to the survey No. 4456 aforesaid, so far as complainant was concerned, was a transaction entirely and exclusively between the complainant and this respondent, with which the said Henry Heath Finley had nothing to do.

This respondent further answering, says that as to the complainant's *belief*, that at the time the contract mentioned in the original bill of complaint was entered into, this respondent and the said Henry Heath Finley had a good and perfect title to the land they sold him, he knows nothing other than that complainants represented at the time to this respondent] and the said Henry Heath Finley, that he knew all about their title, and that he had been endeavoring for a long time, to ascertain their residence, that he might procure their interest in the same, and that it was from said complainant mainly, that this respondent and the said Henry Heath Finley, acquired their knowledge of their interests in said land, and that from the knowledge so acquired, they were induced to enter into the contracts mentioned in the complianant's original bill of complaint at and upon his complainant's urgent solicitation.

This respondent further answering says, that as to the time when the said complainant became possessed of a knowledge of the facts, that the susveys and entries mentioned in his original bill of complaint, were made in the name of a dead man, and that the patents had issued in the name of a man not in being, this respondent cannot answer of his own knowledge, but he supposes complainant become acquainted with those facts after this respondent, through his counsel, had communicated the date of the will of said Charles Bradford, shortly before complainant made the entry, as stated in the amended bill of complaint, and which this respondent is happy in admitting he did make, as alleged in his amended bill of complaint; and which this respondent alleges was the consummation of the fraud meditated by said complainant, at the time of entering into the contract menioned in complainant's original bill of complaint. This respondent further answering, says that he cannot admit as a fact, that the complainant's having entered and surveyed the lands mentioned in the original bill of complaint, in his own name, he thereby acquired and invested himself with the best and only right and title to said lands, either sanctioned by the Supreme Court of the United States, the Circuit Court of the United States for the district of Ohio, the supreme court of the State of Ohio, and the judicial decisions of all the States in the Union, or by equity and good conscience; but on the contrary thereof he denies the assertion, that such monstrous absur-

dity, or gross injustice, has been sanctioned by those revered and respected tribunals. This respondent further answering, denies that said lands entered by complainants, as mentioned in his amended bill of complaint, were, at the time he so entered them wholly vacant and unappropriated, but on the contrary thereof, he alleges they had been long previously legally entered, surveyed, patented, and appropriated under the warrants in the name of Charles Bradford, a meritorious revolutionary soldier, the ancestor of the said Henry Heath Finley, and his sister, the wife of this respondent, under and by virtue of whose entry, survey and patents, they acquired, and had invested in them a good and perfect title to said lands, and as such, had good right to bargain and sell the same to said complainant; and had good right and title to survey No. 4456, mentioned in complainant's amended bill of complaint. Wherefore, this respondent prays, that complainant's bill of complaint, and the amendments thereto, be dismissed, and the defendants be discharged, with their recoverable costs and charges, in this behalf, most wantonly and unrighteously imposed upon them.

O. METCALF, and
W. W. FETTERMAN,
Solicitors for Respondents.

CITY OF PITTSBURGH, *ss.*

Personally came before me, David Barr, respondent above, who made oath, that to the best of his knowledge and belief, the foregoing is a full, just, and true answer, to the complainant's amended bill of complaint, and that the facts alleged in the same, as coming within the knowledge of said respondent, are true, and so far as they are stated as founded upon information, he believes them to be true.

DAVID BARR.

Sworn and subscribed before me, the 28th March, 1837.

M. B. LOWRIE, *Alderman of Pittsburgh.*

[ENDORSED,]

No. 10,—Oct. T. 1835.

HENRY HEATH FINLEY and DAVID BARR, *vs.* JAMES GATTOWAY, } Several answer of David Barr, to complainant's amended bill of complaint.

Filed February 25, 1837.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. 10.—*Of October Term*, 1835.

Craft. JAMES GALLOWAY, Jr.
vs.
Metcalf. HENRY H. FINLEY and DAVID BARR. } In equity.

And now, to wit, this 26th day of May, 1837, this cause came on to a hearing, and was heard on the original and amended bills, and the answers; on consideration whereof, the court order, adjudge and decree, that the complainant's bill of complaint be dismissed with with cost.

HENRY BALDWIN.

May 30, 1837.

[ENDORSED.]

No 10.—*Of October Assise*, 1835.

GALLOWAY
vs.
FINLEY and BARR.

Decree—Filed May 30th, 1837.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. 10.—*Of October Term*, 1835.

JAMES GALLOWAY Jr.
vs.
HENRY H. FINLEY and
DAVID BARR. } In Equity.

Know all men by these presents, that I, Robert Peebles, am held and firmly bound unto Henry H. Finley and David Barr, in the sum of four hundred dollars, to be paid to the said Henry H. Finley and David Barr, their executors or administrators, to which payment well and truly to be made and done, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated this thirtieth day of May, A. D. 1837. Whereas, James Galloway, jr. has this day presented an appeal from a decree of the circuit court of the United Stutes, for the western district of Pennsylvania, to the Supreme Court of the United States to reverse said decree, made by the said court in the above stated case, in which James Galloway jr. is plaintiff, and Henry H. Finley and David Barr defendants [which said appeal was allowed by the court.] Now, therefore, the condition of this obligation is such, that if the above named James Galloway, jr. shall prosecute his said appeal, with effect, and answer all damages and cost, if he shall fail to make good his plea, then this obligation to be void, otherwise, to be and remain in full force and virtue.

ROBERT PEEBLES. [SEAL.]

Sealed and delivered in presence of
JAMES G. CRAFT.

[ENDORSED.]

No. 10.—*Of October T.* 1835.

JAMES GALLOWAY, Jr.
vs.
FINLEY & BARR.

Bond approved:
TH. IRWIN,
Dist. Judge.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss.

I, Edward J. Roberts, clerk of the district aforesaid, do hereby certify that the forgoing is a true exemplification of the record and proceedings in the circuit court of the United States, for said district, in the case wherein James Galloway, Jr. is complainant, and Henry Heath Finley and David Barr are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Pittsburgh, this twenty-seventh day of December, A. D. 1837, and of the independence of the United States the 61st.

[SEAL.] E. J. ROBERTS, *Clk.*

1151

SUPREME COURT OF THE UNITED STATES.

No. 51.

BEULAH STELLE, PLAINTIFF IN ERROR,

VERSUS

DANIEL CARROLL, OF DUDINGTON, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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UNITED STATES OF AMERICA:

The President of the United States,

To the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington--greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or, some of you, between Beulah Stelle, plaintiff, and Daniel Carroll, of Dudington, defendant, a manifest error hath happened, to the great damage of the said Beulah Stelle, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of January, next, in said supreme court, to be then and there held; and that the record and proceeding aforesaid being inspected, the said supreme court may cause further to be done therein, to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 22d day of December, 1837.

W. BRENT,
Clk. Cir. Ct. Dist. Col. for C'nty of Wash'n.

DISTRICT of COLUMBIA, *sct.*

The United States of America to Daniel Carroll, of Dudington—greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the 2d Monday of January, next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Beulah Stelle is plaintiff in error, and you are derendant in error, to show cause, if any there be, why judgment rendered against the said Beulah Stelle, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable William Cranch, Chief Judge of the Circuit court of the District of Columbia, this 22d day of December, 1837.

Served on Joseph H. Bradley, Esq, attorney.

Know all men by these presents, that we, Beulah Stelle, Edward B. Stelle and Robert Kearon, are held and firmly bound unto Daniel Carroll, of Dudington, in the full and just sum of two hundred dollars, current money, to be paid to the said Daniel Carroll, of Dudington, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this eighteenth day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas, lately, at a circuit court of the United States, for the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Beulah Stelle was plaintiff, and the said Daniel Carroll, of Dudington, was defendant, judgment was rendered against the said Beulah Stelle, and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Daniel Carroll, of Dudington, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2d Monday of January next.

Now, the condition of the above obligation is such, that if the said Beulah Stelle shall prosecute her writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

BEULAH STEELE. [SEAL.]
EDWD. B. STELLE. [SEAL.]
ROBERT KEORAN. [SEAL.]

Signed, sealed and delivered in the presence of
CHS. MCNAMEE, as to E. B. Stelle,
C. H. W. MEHAN, as to Robert Keoran.
THOMAS STELLE, as to B. Stelle.

Approved,
W. CRANCH.

Copy—Test,
W. BRENT, *Clerk.*

STYLE OF COURT.

DISTRICT OF COLUMBIA, *ss.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States of America the 60th.

Present: the honorable William Cranch, chief judge, Buckner Thruston and James S. Morsell, assistant judges, Alexander Hunter, Esq. marshal, William Brent, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

PARTIES.

BEULAH STELLE
against
DANIEL CARROLL, of Dudington.

Be it remembered, that heretofore, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-three, the said plaintiff, by William L. Brent, Esq. her attorney, prosecuted and sued forth out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal aforeraid, in the words and of the tenor following, to wit:

WRIT.

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the Marshal or the District of Columbia—greeting:

We command you, that you take Daniel Carroll, of Budington, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body, before the district court of the District of Columbia, to be held for the county of Washington, at the city of Washington, on the fourth Monday of November instant, to answer unto Beulah Stelle, widow, who was the wife of Pontius D. Stelle, deceased, in a plea that he render unto her, the said Beulah, her reasonable dower, which falleth to her out of lots 16, 17, 18, and 19, in square 728, which were of the said Pontius D. Stelle, deceased, heretofore her husband, in the city of Washington, in the county aforesaid, whereof she hath nothing, as she saith, and whereof she complaineth that the said Daniel Carroll, of Dudington, deforces her, &c.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, Esq. chief Judge of our said court, at the city of Washington, the 29th day of November, anno domini, one thousand eight hundred and thirty-three.

Issued the 22d day of November, 1833.

WM. BRFNT, *Clerk.*

W. L. BRENT.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-three, being the day of the return of the aforegoing writ, comes into the circuit court here,

the said Beulah Steele, by her attorney aforesaid, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid, directed, makes return thereof to the court here, thus endorsed, to wit: "Cepi."

H. ASHTON, *Marshal.*

RULE NAR. AND IMPARLANCE TO MARCH TERM, 1334.

And the said Daniel Carroll, of Dudington, being called, appears in court here, by Richard Wallack, Esq. his attorney: and thereupon the said defendant, by his attorney aforesaid, prays that the said plaintiff may declare against him in the plea aforesaid. Whereupon, it is ruled by the court here, that the said plaintiff declare against the said defendant as aforesaid, in the plea aforesaid, or judgment by the court here will be rendered against her in default thereof; and the said plaintiff, by her attorney aforesaid, prays leave of the court here to imparle until the fourth Monday in March, next, and then to declare against the said defendant as aforesaid, in the plea aforesaid, and to her it is granted; and the same day is given to the said defendant, then, &c.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-four, to which said day the said plaintiff had leave to imparle, and then to declare against the said defendant as aforesaid, in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendant, by his attorney aforesaid: and the said plaintiff, by her attorney aforesaid, prays leave of the court here further to imparle, until the fourth Monday of November next, and then to declare against the said defendant as aforesaid, in the plea aforesaid, and to her it is granted; the same day is given to the said defendant, then, &c.

IMPARLANCE TO NOV. TERM, 1834.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-four, to which said day the said plaintiff had leave to imparle, and then to declare against the said defendant as aforesaid, in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendant, by his attorney; and the said plaintiff, by her attorney aforesaid, declares against the said defendant as aforesaid, in the plea aforesaid, in form following, to wit:

NAR.

WASHINGTON COUNTY, *District of Columbia*, to wit:

Daniel Carroll, of Washington county aforesaid, gentleman, was summoned to answer unto Beulah Stelle, widow, who was the wife

of Pontius D. Stelle, deceased, in a plea, that he render unto her the said Beulah her reasonable dower, which belongs to her, of the freehold tenements, which were of the said Pontius D. formerly her husband, lying and being in the city of Washington, in the county of Washington, in the District of Columbia, whereof she has nothing, as she says, and whereof she complains, that the said Daniel Carroll unjustly deforces her, &c. And whereupon, the said Beulah, by W. L. Brent, her attorney complains, and demands against the said Daniel Carroll the third part of the following lots of ground in the said city of Washington, with all their rights, privileges, improvements and appurtenances, viz. the third part of lots numbered sixteen, (16) seventeen, (17) eighteen, (18) and nineteen, (19) in square numbered seven hundred and twenty-eight, (728) in Washington city aforesaid, as described in the plan of said city, together with all the buildings, improvements, rights and privileges thereunto belonging, as the dower of her, the said Buelah, of the endowment of the said Pontius D. heretofore her husband, whereof she hath nothing, &c. and which the said Daniel Carroll detains from her, and refuses to deliver the same or any part thereof to her, although often demanded so to do by the said Beulah, and therefore she brings suit, and so forth.

BRENT & BRENT.
Plaintiff's Attorney.

JOHN DOE and RICHARD ROE,
Pledges, &c.

RULE PLEA AND IMPARLANCE TO MARCH TERM, 1835.

And thereupon, on motion of the said plaintiff, by her attorney aforeaid, it is ruled by the Court here, that the said defendant answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid, of the said plaintiff, in the plea aforesaid; and to him it is granted; and the same day is given to the aforesaid plaintiff also.

At which said fourth Monday of March, in the pear of our Lord one thousand eight hundred and thirty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendant, by his attorney aforesaid.

INPARLANCE, AND CONTINUANCE TO NOV. TERM, 1835.

And the said defendant, by his artorney aforesaid, as before, defends the force and injury when, and so forth, and prays leave of the court

here, further to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, and to him it is granted; and the same day is given to the said plaintiff also.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, comes into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendant by his attorney aforesaid; and the said defendant, by his attorney aforesaid, as before, defends *defendends* the force and injury when, and so forth;

IMPARLANCE AND CONTINUANCE.

And prays leave of the court here further to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, and to him it is granted; and the same day is given to the said plaintiff also.

MARCH TERM, 1836.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, comes again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendant, by his attorney aforesaid;

PLEA OF DEFENDANT.

And the said defendant, by his attorney aforesaid, comes and saith, that the said plaintiff, Beulah Stelle, ought not to have dower of the tenements aforesaid, with the appurtenances, of the endowment of the said Pontius D. Stelle, because he says, that the said Pontious D. Stelle, late husband of the said Beulah Stelle, neither on the day he married the said Beulah Stelle, nor ever afterwards, was seized of the tenements aforesaid, with the appurtenances, whereof, &c. of such an estate as he could thereof endow the said Beulah Stelle; and of this he puts himself upon the country, &c. and the said plaintiff in like manner, and so forth.

VENIRE FACIAS.

Therefore, let a jury thereon appear before the court here immediately, by whom, &c. and who neither, &c. to recognise &c. because as well, &c. whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the pannel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the act of assembly in such case made and provided; thereupon the twelve persons being so drawn,

and called, come, to wit: Peter Casanave, A. H. Young, Alexander Borland, Nicholas Callan, D. A. Gardiner, George Semmes, Walter Clarke, Edward Tolson, Thomas Fenwich, William Eaton, Jacob Gideon, and Daniel Lovett, who being empannelled and sworn to say the truth in the premises, upon their oath do say:

VERDICT FOR DEFENDANT.

That the within named Pontius D. Stelle, late the husband of the said plaintiff, neither on the day when he married the said plaintiff, nor ever after, was seized of the tenements within specified, with the appurtenances, whereof, &c. of such an estate as he could thereof endow the said plaintiff, as the said defendant has within in pleading alleged; therefore, it is considered by the court here, that the said plaintiff take nothing by her writ and declaration aforesaid, but be in mercy, &c. for her false clamor; and that the said defendant go without day, &c. and it is also considered by the court here, that the said defendant recover against the said plaintiff the sum or sixteen dollars and twelve cents, by the court here unto him, the said defendant, on his assent adjudged for his costs and charges by him about his defence in this behalf laid out and expended, and that he have thereof of his execution against the aforesaid plaintiff, and so forth.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiff, by her attorney aforesaid, filed in court here, the following bill of exceptions, to wit:

PLAINTIFF'S FIRST EXCEPTION.—Plaintiffs 1st Exception.

BEULAH STELLE
vs.
DANIEL CARROLL, of Dud'n. } Dower rende nie habet.

At the trial of this cause, the demandant having offered in evidence a deed from Zachariah Walker to the defendant, dated the 7th February, 1816; (copied in page ;) also a deed from Pontius D. Stelle, the deceased husband of the demandant, to Peter Miller, dated 28th January, 1811, (copied in page ;) both of which deeds were duly recorded among the land records of Washington county, in the district of Columbia; and having also proved that the following advertisement was published in the National Intelligencer at the time it bears date, (copied in page ;) and that during the time it was so published, Peter Miller was a subscriber to and received the National Intelligencer; and having further proved that during the marriage of this demandant with her said husband, he was possessed of lots numbered 17 and 18, and cultivated the garden on lot numbered 16; and having further proved that the said Pontius D. Stelle, died sometime in the year 1828, and that the building on lot number 16, rented at the rate of $500 per annum, during the years 1832, '3,

'4 and '5. The defendant then offered evidence to prove that the said Pontius D. Stelle left the possession of said lots sometime before his death; and further gave in evidence a deed from George Walker and William Turnicliffe to the said Pontius D. Stelle, dated on the 24th August, 1804, (copied in page ;) also a deed from the said Pontius D. Stelle and wife to William Turnicliffe, date on the 25th August, 1804, (copied in page ;) also a deed of mortgage from said Stelle and wife to Peter Miller, dated 14th Nov. 1808, (copied in page ;) also a deed of mortgage from said Stelle and wife to Peter Miller, dated 1st March, 1810, (copied in page .) It was also further proved by the defendant, that the buildings on lot 16, were erected since the deed of 1811 to Peter Miller, and not by said P. D. Stelle.

The defendant then moved the court to instruct, that upon the aforegoing evidence the demandant was not entitled to recover, which instruction the court gave; and the demandant excepted to the same, and this, her bill of exceptions, is signed, sealed and ordered to be enrolled this, 7th of June, 1836.

WM. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

DEED FROM Z. WALKER TO D. CARROLL.

Deed from Zachariah Walker to Daniel Carroll, of Dudington, dated this 7th February, 1816, referred to in demandant's exceptions, page

ZACHARIAH WALKER, trustee
to
DANIEL CARROLL, of Dud'n. } Deed, recorded 8th day of Feb. 1806.

This indenture, made this seventh day of February, anno domini, eighteen hundred and sixteen, between Zachariah Walker, of the city of Washington, in the District of Columbia, trustee, for the purposes hereinafter mentioned, of the one part, and Daniel Carroll, of Dudington, of the same place, of the other. Whereas, by a decree of the circuit court of the District of Columbia, for the county of Washington, sitting as a court of chancery in the case of the president and directors of the Bank of Washington, complainants, against Mary Miller, widow of Peter Miller, James Moore, and Sarah his wife, Mary Miller, the younger, and Henry Miller, John McGowan, and Griffith Coombe, administrators of Peter Miller, Moses Young, Henry Ingle, and Elias B. Caldwell, defendants: the said Zachariah Walker was appointed trustee to sell certain property in the said decree mentioned, on a credit of three and six months, with interest. And the said Zachariah Walker did, as trustee aforesaid, on the twenty-fourth day of June, eighteen hundred and fifteen, after giving the notice directed in said decree, by publishing the same in the National Intelligencer, set up and expose at public auction, at (McLeod's hotel, Capitol Hill) lots numbered sixteen, seventeen, and eighteen, with all the interest of Peter Miller in lot numbered nineteen, in square num-

bered seven hundred and twenty-eight, with the improvements thereon, lying and being in the city of Washington aforesaid, when the said Daniel Carroll, of Dudington, being the highest bidder therefor, became the purchaser thereof, at and for the sum of eight thousand and seventy-one dollars, current money; and the said Daniel Carroll, of Dudington, having paid and satisfied to the said Zachariah Walker, the said purchase money and interest thereon, amounting together to the sum of three thousand five hundred and seventy-one dollars and fifty-one cents; and the said court, having on or about the ninth day of January last, finally ratified and confirmed the sale aforesaid, reference being had to the record and proceedings of said court in the case aforesaid, will fully and at large appear.

This indenture, therefore, witnesseth: that the said Zachariah Walker, trustee as aforesaid, in consideration of the premises, and of the said sum of three thousand five hundred and seventy-one dollars and fifty cents, current money, to him in hand paid, by the said Daniel Carroll, of Dudington, before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, unto the said Daniel Carroll, of Dudington, his heirs and assigns forever, all the hereinfore described lots, with the improvements and appurtenances thereto belonging, or in any wise appertaining, which he, the said Zachariah Walker, under and by virtue of said decree, can of right sell and convey. To have and to hold the said lots, numbered sixteen, seventeen, and eighteen, with the interest of Peter Miller in lot numbered nineteen, in square numbered seven hundred and twenty-eight, with the improvements and appurtenances, to the said Daniel Carroll, of Dudington, his heirs and assigns forever, to his and their proper use and behoof forever.

In witness whereof, the said Zachariah Walker, as trustee as aforesaid, hath hereunto subscribed his name, and affixed his seal, the day and year first within written.

[SEAL.] ZACHARIAH WALKER, *Trustee.*

Signed, sealed and delivered in the presence of
CH. GLOVER,
B. THRUSTON.

DISTRICT OF COLUMBIA, *Washington County*, to wit:

On the seventh day of February, in the year of our Lord eighteen hundred and sixteen, Zachariah Walker personally appeared before the subscriber, an assistant judge of the circuit court of the District of Columbia, and acknowledged the aforegoing instrument of writing to be his act and deed, for the purposes therein mentioned.

B. THRUSTON.

DEED FROM P. D. STELLE TO PETER MILLER.

Deed from Pontius D. Stelle and wife to Peter Miller, dated 28th day of January, 1811, referred to in plaintiff's exceptions, page

PONTIUS D. STELLE and wife *to* PETER MILLER. } Recorded 29th January, 1811.

This indenture, made this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eleven, between Pontius D. Stelle, of the city of Washington, in the District of Columbia, of the one part, and Peter Miller, of the same place, of the other part. Whereas, by indenture of mortgage, bearing date on or about the twenty-fifth day of August, one thousand eight hundred and four, the said Pontius D. Stelle mortgaged to William Turnicliffe the lots known and distinguished in the plan of the city of Washington, as lots numbered sixteen and seventeen, in square numbered seven hundred and twenty-eight, to secure the payment of four thousand dollars, the balance of which sum of money hath been paid, or secured to be paid to the said William Turnicliffe, by the said Peter Miller, and from which the said Pontius D. Stelle is wholly released and exonerated. And whereas, the said Peter Miller has advanced to the said Pontius D. Stelle several large sums of money, for securing the payment of which the said Pontius D. Stelle had conveyed to the said Peter Miller lot numbered eighteen, in said square numbered seven hundred and twenty-eight, with a deed of defeazance from the said Peter Miller to the said Pontius D. Stelle, which said last mentioned sums of money the said Stelle having failed to pay to the said Miller, the said conveyance of the said lot numbered eighteen, to the said Miller, hath become absolute and unconditional. And whereas, the said Pontius D. Stelle is desirous of more fully conveying and assuring the above described lots of ground to the said Peter Miller. Now, this indenture witnesseth: that for and in consideration of the premises, and for and in consideration of the sum of eight hundred and ninety-two dollars and ninety-eight cents, in hand paid, or secured to be paid, by the said Miller to the said Pontius D. Stelle, the receipt of which is hereby acknowledged, he, the said P. D Stelle, hath given, granted, bargained, sold, aliened, released and confirmed, and by these presents doth give, grant, bargain, sell, alien, release and confirm, unto the said Peter Miller, his heirs and assigns, the above described lots or parcels of ground, numbered sixteen, seventeen and eighteen, in square numbered seven hundred and twenty-eight, in the city of Washington aforesaid, together with all and singular the buildings and improvements, privileges and appurtenances to the same belonging, or any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the right, title, interest, property, claim and demand, whether in law or in equity, which the said Pontious D. Stelle hath in the above described lots, or either of them, or of any part thereof. To have and to hold the above described lots of ground, with the appurtenances,

and the reversions and remainders, rents, issues and profits thereof, unto the said Peter Miller, his heirs and assigns to the only proper use and behoof of the said Peter Miller, his heirs and assigns forever; and the said Pontius D. Stelle, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise and agree to and with the said Peter Miller, his heirs and assigns, that he, the said Pontius D. Stelle, and his heirs, the above described lots of ground and premises, with the appurtenances, (except the liens above mentioned) to him, the said Peter Miller, his heirs and assigns, against all and every person or persons whatsoever, claiming, or to claim, any right, title or interest in or to the same, or any part thereof, shall and will warrant and forever defend by these presents: and further, that the said Pontius D. Stelle, and his heirs, shall and will upon the reasonable request, and at the cost and charge of the said Peter Miller, make such further and other conveyances and assurances of the above described lots of ground, or either of them, as the said Peter Miller or his counsel, learned in the law, shall or may reasonably require of him or them.

In witness whereof, the said Pontius D. Stelle hath hereunto set his hand and affixed his seal the day and year above written.

PONTIUS D. STELLE. [SEAL.]

Signed, sealed and delivered in the presence of
B. THRUSTON.

WASHINGTON, *January 28th*, 1811.

Received the consideration money in there mentioned.

PONTIUS D. STELLE.

Test: B. THRUSTON.

DISTRICT OF COLUMBIA,
Washington County, ss.

Be it remembered, that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eleven, before me, the subscriber, an assistant judge of the circuit court of the District of Columbia, personally appears Pontius D. Stelle, the grantor within named, and acknowledged the within deed or instrument of writing to be his act and deed, and that he executed the same for the uses, intents, and purposes therein mentioned.

B. THRUSTON.

Deed from George Walker and William Turnicliffe, to Pontius D. Stelle, dated 24th August, 1804, referred to in plaintiff's exceptions, page

GEORGE WALKER, and WM. TURNICLIFFE, *to* PONTIUS D. STELLE	Deed, recorded 8th day of Dec. 1804.

DEED FROM WALKER AND TURNICLIFFE, TO P. D. STELLE.

This indenture, made this twenty-fourth day of August, in the year

of our Lord, one thousand eight hundred and four, between George Walker and William Turnicliffe, both of the city and county of Washington, in the District of Columbia, of the one part, and Pontius D. Stelle, of the same place, of the other part.

Whereas, the said George Walker, heretofore purchased two pieces or lots of ground in the said city of Washington, which are known ond distinguished on the plan thereof, as lots numbered sixteen and seventeen, in square numbered seven hundred and twenty-eight, to wit, number sixteen of a certain Lund Washington, who conveyed the same to him in fee simple, by deed or indenture, dated on or about the third day of October, in the year seventeen hundred and ninety-eight, and lot numbered seventeen, of the commissioners of the city of Washington, which commissioners, namely, William Thornton, Alexander White, and Tristram Dalton, conveyed the same in fee simple to said George Walker, by deed or indenture, dated on or about the seventeenth day of Febraury, in the year one thousand eight hundred and two; and, whereas, the said George Walker, after the conveyance thereof to him, mortgaged the said lot seventeen, to the late General George Washington and Thomas Law, which mortgage has been fully paid off, satisfied, and discharged; and, whereas, the said George Walker by his bond of conveyance, dated on or about the twenty-second day of September, in the year one thousand eight hundred and two, did, for full consideration, bind himself, to convey to the said William Turnicliffe, his heirs, and assigns, in fee simple, or to such person or persons, as he or they, should direct or appoint, the said two lots, sixteen and seventeen, with the appurtenances; and the said George Walker being paid and satisfied the consideration for said two lots, and the said William Turnicliffe, having sold and transferred all his right, title, and interest, in the same, and the bond aforesaid, to the said Pontius D. Stelle, and requested the said George Walker to convey the same two lots to the said Pontius D. Stelle, in fee, all of which is attested by the said Turnicliffe, being a party thereto.

Now, therefore, this indenture, witnesseth: that the said George Walker, and William Turnicliffe, in consideration of the premises, and of the sum of one dollar current money, to the said George Walker, in hand paid by the said Pontius D. Stelle, at or before the sealing and delivery of these presents, the receipt of which, he doth hereby acknowledge, have given, granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents, doth give, grant. bargain, and sell, alien, enfeoff, release, and confirm, unto the said Pontius D. Stelle, his heirs, and assigns, forever, all those, the aforesaid two pieces or lots of ground, being lots numbered sixteen and seventeen, in square numbered seven hundred and twenty-eight, in the said city of Washington; together with all and singular, the buildings, improvements, rights, privileges, advantages, appurtenances, and hereditaments, to the same, and each of them belonging, or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, property, and demand, both at law, and in equity of them, the said George Walker, and William Turnicliffe, in and to the same, and

every part thereof; to have and to hold the same two pieces, or lots of ground and premises, with the appurtenances, aforesaid, to him, the said Pontius D. Stelle, his heirs, and assigns forever, to his and their sole use, benefit and behoof, and no other; and the said George Walker, and William Turnicliffe, for themselves, their heirs, exeeutors and administrators, hereby covenant, promise and agree to and with the said Pontius D. Stelle, his heirs and assigns, in manner and form following, that is to say, that they, the said George Walker and William Turnicliffe, shall and will forever warrant and defend the said two pieces of lots of ground, and each of them, and premises, with their appurtenances, to him, the said Pontius D. Stelle, his heirs and assigns, from and against them, the said George Walker and William Turnicliffe, and their heirs and assigns, all persons claiming or who may claim, by, from, or under them, or any of them, and further, that they the said George Walker and William Turnicliffe, and their heirs, shall and will, or any, and all times hereafter, at the request, and cost, and charge, of the said Pontius D. Stelle, his heirs, and assigns, make and duly execute any and every other deed, conveyance, and assurance, in the law, that may be deemed necessary and requisite, for the more full and perfect conveying and assuring the said pieces or lots of ground, and premises, with the appurtenances aforesaid, and every part thereof, to the said Pontius D. Stelle, his heirs and assigns: provided, that the same shall contain no other, or further covenant than are herein contained.

In testimony whereof, the said George Walker and William Turnicliffe, have to these presents set their hands, and affixed their seals, on the day and year first above written.

GEORGE WALKER. [SEAL.]
WM. TURNICLIFFE. [SEAL.]

Signed, sealed, and delivered in presence of
THOMAS MUNROE.

DISTRICT OF COLUMBIA,
Washington County, to wit:

Be it remembered, that on this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and four, personally appeared before the undersigned, superintendent of the affairs of the city of Washington, George Walker and William Turnicliffe, the party of the first part, and grantors named in the within and aforegoing indenture, or instrument of writing, and acknowledged the said indenture or instrument of writing, to be their act and deed, and the act of, and deed of each of them, according to its true intent and meaning; and the lots, and premises, with the appurtenances therein mentioned, to be the right and estate of the therein named grantor, Pontius D. Stelle, his heirs and assigns, forever.

Acknowledged before, and certified by,

THOMAS MUNROE.

Deed from Pontius D. Stelle to William Turnicliffe, dated 25th August, 1894, referred to in plaintiff's exceptions, page

PONTIUS D. STELLE *to* WILLIAM TURNICLIFFE. } Deed, recorded 5th September, 1804.

DEED FROM STELLE TO MILLER.

This indenture, made this twenty-fifth day of August, in the year one thousand eight hundred and four, between Pontius D. Stelle, of the city of Washington, in the district of Columbia, of the one part, and William Turnicliffe, of the same place, of the other part.

Whereas, the said William Turnicliffe, hath sold to the said Pontius D. Stelle, in fee simple, lots numbered sixteen and seventeen, with the appurtenances, in square numbered seven hundred and twenty-eight, in the city of Washington, for the sum of six thousand dollars, current money, payable in manner following, namely, two thousand dollars in hand, and the remaining four thousand dollars, in three equal annual instalments, with interest from this day.

And whereas, the said William Turnicliffe, and a certain George Walker, in whom the legal estate in said lots was vested, have by their deed of bargain and sale, conveyed the same two lots to the said Pontius D. Stelle, who hath agreed to reconvey the same in mortgage to the said William Turnicliffe, to secure the payment of said sum of four thousand dollars, with interest as aforesaid.

Now, therefore, this indenture witnesseth: that the said Pontius D. Stelle, in consideration of the premises, and of the sum of one dollar, to him in hand paid, by the said William Turnicliffe, at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, hath given, granted, bargained and sold, aliened, enfeoffed, released, and confirmed, and by these presents, doth give, grant, bargain and sell, alien, enfeoff, release, and confirm, unto him the said William Turnicliffe, his heirs and assigns, forever, all and singular, the aforesaid two lots of ground, being those two lots which, on the plan or survey of the city of Washington, are known and designated, as lots numbered sixteen and seventeen, in square numbered seven hundred and twenty-eight, with the buildings, improvements, privileges, advantages, and appurtenances, to the same belonging, or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the estate, right and title, both legal and equitable, of him, the said Pontius D. Stelle, in and to the same; to have and to hold the said two lots and premises, with the appurtenances as aforesaid, to him, the said William Turnicliffe, to heirs and assigns forever, to his and their sole use, benefit and behoof: provided always, and these presents are upon this condition, and it is hereby declared to be true intent and meaning thereof, and of the parties; that if the said Pontius D. Stelle, his heirs, executors, administrators, or assigns, do, and shall well and truly pay,

or cause to be paid to the said William Turnicliffe, his executors, administrators, or assigns, the said sum of four thousand dollars, with interest in manner following, to wit, one third part, with legal interest on the whole sum, on or before the twenty-fifth day of August, in the year one thousand eight hundred and five; and one third, with interest on the whole sum then due, on or before the twenty-fifth day of August, one thousand eight hundred and six; and the remaining third with interest, on or before the twenty-fifth day of August, one thousand eight hundred and seven, then these presents, and every part thereof, shall cease and be utterly void, and of no effect, any thing herein contained, to the contrary notwithstanding; and the said Pontius D. Stelle doth, by these presents, covenant, promise, and agree, for himself, his heirs, executors, and administrators, to and with the said William Turnicliffe, his executors, administrators, and assigns, that he the said Pontius D. Stelle, shall and will, well and truly pay to the said William Turnicliffe, his executors, administrators, and assigns, the aforesaid sum of four thousand dollars, with interest thereon, in manner and at the times aforesaid; but it is expressly understood, by and between the said Stelle and the said Turnicliffe, the parties to these presents, and it is hereby agreed between them, that no assignment or transfer of these presents, shall make the said Stelle liable for said instalments, as they become due, should any bill in equity or attachment be laid in the hands of said Stelle, to recover the same or any part thereof, until the bill or attachment be decided, and then the same to be paid according as the decision may direct; and the said Pontius D. Stelle, doth further for his heirs, executors, administrators, and assigns, covenant and agree, with the said William Turnicliffe, his heirs, executors, administrators, and assigns, in manner and form following; that if default shall bs made in the payment of the said sum of four thousand dollars, with interest, or any part thereof, at the time and in the proportions and manner aforesaid, then and from thenceforth, it shall and may be lawful for the said William Turnicliffe his executors, administrators, or assigns, to bring suit, on the covenant, for the payment of the said money, hereinbefore contained; and the said Stelle, his heirs, executors, or administrators, shall and will confess judgment at the first term of the court, to which such suit shall be brought, for the amount of the instalment with interest, for which default shall be made, and in like manner in case of any other default in payment according to the agreement aforesaid; and further, that such judgment and judgments shall be confessed and entered as aforesaid, without imparlance, or other delay, at the first term to which suit or suits may be brought for default in the payment of any and every other instalments as aforesaid.

In testimony whereof, the said Pontius D. Stelle hath, to these presents, set his hand, and affixed his seal, on the day and year first above written.

PONTIUS D. STELLE. [SEAL.]

Signed, sealed, and delivered in the presence of
THOMAS MUNROE.

DISTRICT OF COLUMBIA.

Washington County, to wit:

Be it remembered, that on this fifth day of August, in the year eighteen hundred and four, personally appeared, Pontius D. Stelle, the party named grantor and mortgage, in the within and aforegoing deed, indenture, or instrument of writing, before the undersigned, superintendent of the affairs of the city of Washington, and acknowledged the within and aforegoing deed, indenture, or instrument of writing, to be his act and deed, delivered as such, and the property therein mentioned, to be the right and estate of the therein named mortgagee and grantor, William Turnicliffe, his heirs and assigns, forever, according to the true intent and meaning of said deed.

Ackuowledged before, and certified by,

THOMAS MUNROE.

Deed from Pontius D. Stelle and wife, to Peter Miller, referred to in plaintiff's exceptions, page

PONTIUS D. STELLE, AND WIFE, *to* PETER MILLER. } Deed, recorded 17th Nov. 1818.

DEED FROM P. D. STELLE AND WIFE TO P. MILLER.

This indenture, made this 14th day of November, in the year of our Lord one thousand eight hundred and eight, between Pontius D. Stelle, of the city of Washington, in the district of Columbia, of the one part, and Peter Miller, of the same place, of the other part, witnesseth: that the said Pontius D. Stelle, for and in consideration of the sum of thirteen hundred dollars, to him in hand paid by the said Peter Miller, the receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents, doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said Peter Miller, his heirs and assigns, all that lot of ground in the city of Washington, in the District of Columbia, numbered on the plan of the said city, eighteen, in square numbered seven hundred and twenty-eight, together with all and singular, the buildings, improvements, privileges, and appurtenances, to the same belonging, or in any wise appertaining; to have and to hold the above described lot of ground and premises, with the appurtenances, unto the said Peter Miller, his heirs and assigns, to the only proper use and behoof, of the said Peter Miller, his heirs and assigns forever. And the said Pontius D. Stelle, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree, to and with the said Peter Miller, his heirs and assigns, that the said Pontius D. Stelle, and his heirs, the above described lot of ground and premises, with the appurtenances, to him the said Peter Miller, his heirs and assigns, against all and every person or persons, whatsoever, claiming, or to claim any right, title, or interest, in or to the same, or any part thereof, shall and will hereafter warrant, and forever defend by these presents.

In witness whereof, the said Pontius D. Stelle hath hereunto set his hand and affixed his seal, the day and year first above written.

PONTIUS D. STELLE. [SEAL.]

Signed, sealed, and delivered in the presence of
SAML. N. SMALLWOOD,
DANL. RAPINE.

DISTRICT OF COLUMBIA,
Washington County, ss.

On this 14th day of November, in the year of our Lord one thousand eight hundred and eight, before us the subscribers, two of the justices of the peace in and for said county, personally appears Pontius D. Stelle, the grantor within named, and acknowledges the within deed or instrument of writing, to be his act and deed; at the same time personally appears Buelah Stelle, wife of the said Pontius D. Stelle, party grantor within named, and being by us privately examined apart, from and out of the presence of her husband, acknowledges the within deed or instrument of writing, to her act and deed, and the lot of ground and premises therein mentioned, to be the right and estate of the within named Peter Miller, his heirs and assigns, and acknowledges that she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill-usage by her husband, or fear of his displeasure.

Acknowledged before, and certified by,
SAML. SMALLWOOD,
DANL. RAPINE.

Mortgage from Pontius D. Stelle to Peter Miller, referred to in plaintiff's exceptions, page

PONTIUS D. STELLE *to* PETER MIMLER. } Deed, recorded 1st March, 1810.

DEED FROM STELLE TO MILLER.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and ten, between Pontius D. Stelle, of the city of Washington, in the District of Columbia, of the one part, and Peter Miller, of the said city and District, of the other part.

Whereas, the said Pontius D. Stelle, is indebted to the said Peter Miller, in the full and just sum of two thousand dollars current money.

Now, this indenture witnesseth: that the said Pontius D. Stelle, in consideration of the said debt, owing as aforesaid, to the said Peter Miller, and for the better securing the payment thereof with interest, to the said Peter Miller, his executors, administrators, and assigns, and also in consideration of the sum of five dollars, current money, to him the said Pontius D. Stelle, by the said Peter Miller, in hand paid, at or before the sealing and delivery of these

presents, the receipt whereof the said Pontius D. Stelle doth hereby acknowledge, hath granted, bargained, sold, released, and confirmed, and by these presents, doth grant, bargain, sell, release, and confirm, to the said Peter Miller, and to his heirs and assigns, all and singular, the two lots, pieces or parcels of land, known and designated on the plan or survey of the said city of Washington, as lots numbered sixteen and seventeen, in square numbered seven hundred and twenty-eight, together with all and singular, the rights, privileges, and appurtenances thereunto belonging, or in any manner appertaining, and all the estate, right, title and interest, both in law and equity, of him, the said Pontius D. Stelle, of, in, and to the same; to have and to hold the said two lots and premises, with the appurtenances as aforesaid, and all the estate, right, title, and interest, both in law and equity, of him the said Pontius D. Stelle, of, in, and to the same, unto him, the said Peter Miller, his heirs and assigns, forever, to his and their sole use, benefit, and behoof: provided always, and these presents are upon this condition, and it is the true intent and meaning of these thereof, and of the parties hereto, that if the said Pontius D. Stelle, his heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, unto the said Peter Miller, his heirs, executors, administrators, or assigns, the said sum of two thousand dollars, with interest thereon, on or before the first day of April, in the year one thousand eight hundred and ten, then these presents, and every matter, clause, and thing, herein contained, shall cease, and be utterly void, and of no effect, any thing hereinbefore expressed or contained, to the contrary notwithstanding; and the said P. D. Stelle, doth covenant, promise, and agree, for himself, his heirs, executors, and administrators, to and with the said Peter Miller, his heirs, executors, administrators, and assigns, that he the said Pontius D. Stelle, will well and truly pay, or cause to be paid, to the said Peter Miller, his executors, administrators, or assigns, the aforesaid sum of two thousand dollars, current money, with the interest thereon, on or before the first day of April next.

In testimony whereof, the said Pontius D. Stelle, hath hereunto set his hand and name, and affixed his seal, the day and year first above written.

PONTIUS D. STELLE. [SEAL.]

Signed, sealed, and delivered in the presence of
DANL. RAPINE,
SAML. N. SMALLWOOD.

DISTRICT OF COLUMBIA,
Washington County, ss.

On this first day of March, in the year of our Lord one thousand eight hundred and ten, before the subscriber, justices of the peace, for the District and county aforesaid, personally appeared Pontius D. Stelle, the grantor within named, and acknowledged the within deed or instrument of writing, to be his act and deed; and at the same time

appeared Buelah Stelle, wife of the said Pontius D. Stelle, and being by us privately examined apart from, and out of the hearing of her husband, acknowledged the within deed or instrument of writing to be her act and deed, and acknowledged that she did make her acknowledgment of the same willingly, and freely, and without being induced thereto by fear or threats of, or ill-usage by her husband, or fear of his displeasure.

DANL. RAPINE.
SAML. N. SMALLWOOD.

CLERK'S CERTIFICATE.

And whereas, afterwards, to wit, on the day of in the year of our Lord one thousand eight hundred and thirty six, the said *the said* plaintiff, by her attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereto relating, with the writ of error aforesaid, hereto annexed, is hereby transmitted to the said Supreme Court, accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at the city of Washington, this twenty sixth day of January, Anno Domini, 1837.

[SEAL.] W. BRENT, *Clk.*

BEULAH STELLE,
vs.
DANIEL CARROLL, of Duddington. } 281. Trials. Term, 183 .

The defendant pleads in this case,

First. That Pontius D. Stelle, the deceased husband of the plaintiff, was not at the time of his marriage, or at any time afterwards, seized of any estate in the said lands of which she could be endowed.

Second. That during the coverture, the said Pontius D. Stelle conveyed the lands to by good and sufficient deeds, and that plaintiff allowed her dower therein according to the statute.

Third. That the said Pontius D. Stelle, afterwards duly and lawfully released all his interest in the said lands to

Agreed to be received in short, and the special matter to be given in evidence by either party, without objection to the form of the pleas or issues joined.

BRENT & BRENT,
For Demandant.
JOS. H. BRADLEY,
For Appellee.

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SUPREME COURT OF THE UNITED STATES.

No. 53.

N. ROGERS AND SONS, PLAINTIFFS, IN ERROR,

VERSUS

JAMES M. BATCHELOR, ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSISSIPPI.

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N. ROGERS & SONS
vs.
A. H. BUCKHOLTS' administrators,

Pleas before the honorable Powhatan Ellis, district judge of the United States, in and for the district of Mississippi, at a district court began and held at the town of Jackson, on the fourth Monday of January, in the year of our Lord one thousand eight hundred and thirty-six.

Be it remembered, that heretofore, to wit, on the third day of March, in the year of our Lord one thousand eight hundred and thirty, come N. Rogers and Sons, by Winchester and Sprague, their attorneys, into the clerk's office of the court aforesaid, and ordered out the following writ of summons, *ad respondendum*, against Abel H. Buckholts, which said writ follows in these words and figures, viz:

DISTRICT OF MISSISSIPPI, *ss.*

The United States of America to the marshal of the Mississippi district, *greeting:*

We command you, without delay, to summon Abel H. Buckholts, a citizen of the State of Mississippi, to be, and appear before the judge of the district court of the United States, at a court to be holden at the city of Natchez, for the district aforesaid, on the first Monday of April next, to answer to Nehemiah Rogers, Samuel Rogers, Edward N. Rogers, and George Rogers, citizens of the State of New York, and partners in trade, under the style and firm of N. Rogers and Sons, of a plea that he render unto them three thousand two hundred and eighty-eight dollars, and three cents, which to them he owes, and from them unjustly detains, to their damage of three thousand dollars, and that he do file his plea, or defence, with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Peter Randolph, judge of the district aforesaid, the third day of March, A. D. 1830, and of the independence of the United States the 54th.

[SEAL.] WM. BURNS, *Clerk.*

Upon which said writ, the marshal of the district aforesaid, to whom the same was directed, made the following return, to wit:

"Summoned the 4th day of March, 1830.
JNO. H. NORTON, *Marshal.*"

Afterwards, on the said third day of March, A. D. 1830, the plaintiffs by their attorney aforesaid, filed their bill herein, against the said Abel H. Buckholts, which said bill follows in the words and figures, that is to say:

"UNITED STATES OF AMERICA,
District of Mississippi.

In the district court to April term, 1830, Nehemiah Rogers, Sam'l Rogers, Edward N. Rogers, and George S. Rogers, citizens of the State of New York, jointly negotiating in trade, under the firm of N. Rogers & Sons, by their attorneys, complain of Abel H. Buckholts, a citizen of the State and district aforesaid, now in custody, &c. of a plea that he render unto them the sum of three thousand two hundred and eighty-eight dollars, and three cents, which to them he justly owes, and from them unjustly detains. For that the said defendant, on the first day of January, A. D. one thousand eight hundred and twenty four, at Natchez, to wit, the district aforesaid, by his certain writing obligatory, under his hand, sealed with his seal, and now here to the honorable court shown, the date whereof is the same, day and year aforesaid. For value received, promised the said plaintiffs to pay them, or order, the sum of three thousand two hundred and eighty eight dollars and three cents, on the first day of April then next, ensuing the date thereof, with interest from the date of the same. Yet, though requested, the said defendant hath never paid the same to the said plaintiff, or any part thereof, but wholly neglect so to do, to their damage of three thousand dollars, and, therefore, they sue and so forth,

WINCHESTER & SPRAGUE,
Attys. for Pltffs."

"And the said defendant comes and defends the wrong and injury when, &c. and craves oyer of the said writing, obligatory, in the plaintiff's declaration mentioned, which is read to him in these words.

"$3288 03. NATCHEZ, MISSISSIPPI.

On the first day of April next, we promise to pay N. Rogers & Sons, or order, three thousand two hundred and eighty eight dollars 3 cts. value received, with interest from date. Witness our hands and seals, this first day of January, 1824.

JNO. RICHARDS. [SEAL.]
A. H. BUCKHOLT. [SEAL.]"

Which being read and heard, the said defendant says, actio non, because he says, that heretofore, to wit, on the day of 182 . at the district aforesaid, he well and truly paid to the said plaintiff the said debt, in plaintiff's declaration mentioned, and all damage and interest, all which he is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have and maintain his aforesaid action thereof against him, &c.

McMUNAN & RUCKNER,
Deft's Attys."

And the plantiffs now come, and for replication says precludi non, because they say that the said defendant hath not well and truly paid the said debt in the said declaration mentioned, nor any part thereof, at, to wit, on the day and year aforesaid, to wit, at the county aforesaid, and of this he puts himself upon the country.

WINCHESTER & SPRAGUE, *Attys. for Pltffs.*

And defendant doth the like, and this cause was then legally continued.

Afterwards, to wit, at the January term of the court aforesaid, that is to say, on the first day of February in the year of our Lord, one thousand eight hundred and thirty-three, until which time this cause was legally continued, came the parties aforesaid by their respective attorneys aforesaid, and the marshal of the district aforesaid, having summoned certain good and lawful men of his district, according to the statute in such case made and provided, to be and appear before the judge of the district aforesaid, at the same term of the court last aforesaid, by whom and so forth, and who neither, and so forth, to recognize, and so forth, because and so forth; the same day is given to the parties aforesaid, then, and so forth.

At which term of the court last aforesaid, the jurors of the jury of which mention is last made, being called, certain of them came, to wit:

" Blanton McAlpin,	Thomas Redman,
Reddick E. Small,	John G. Taylor,
Augustus Texier,	Samuel McAllister,
Cyrus Marsh,	Richard L. Smith,
Ralph Miller,	David Ahart,
Alex'r. T. McMartry	Louis Robillaite; '

Who being empannelled, tried, and sworn to speak the truth, concerning the matters within contained, say upon their oaths, " that the defendant hath well and truly paid the debt in the plaintiffs declaration mentioned, in manner and form as in pleading alleged; and the jurors aforesaid, further certify that the plaintiffs are indebted to the defendant in the sum of eighteen hundred and ninety dollars, and forty four cents."

Whereupon, the said defendant, by his attorneys aforesaid, prays judgment against the said plaintiffs, upon the verdict aforesaid, by the jurors aforesaid, in form aforesaid given, and the plaintiffs aforesaid, by their attorneys aforesaid, say that the court here ought not to proceed to render judgment upon the verdict aforesaid, and prays that the verdict aforesaid, by the jurors aforesaid, in form aforesaid given, be stayed, and that a new trial be granted; and file in court, here, the following reasons, to wit:

" First, because the jury ought not to have allowed the offset of the three thousand dollar bill of exchange drawn by Rogers and Sons on John Richards.

2d. Because the jury ought not to have allowed the offset for proceeds of the sale of the cotton paid to Rogers and Sons, by Lamber and Brothers, by the direction of Richards and Buckholts.

3d. That the jury were improperly ordered in this case.

(Signed) GEO. WINCHESTER."

And hereupon, the aforesaid reasons for a new trial being seen, and by the court here fully understood, and mature deliberation being had thereupon: for, that it appears to the court here, that the verdict aforesaid be set aside, and held entirely as void and of no force or

effect, and that the issue aforesaid, be tried anew by other jurors to be afresh empannelled.

And this cause was then legally continued.

Afterwards, to wit, at the January term of the court aforesaid, that is to say, on the twenty fifth day of February, in the year of our Lord one thousand eight hundred and thirty four, until which term this cause was regularly continued, came the said plaintiffs by their attorneys aforesaid, and gives the court here to understand and be informed, that since the last continuance of this cause the said defendant hath died, which is not denied, but admitted to be true. And this cause was then legally continued.

Afterwards, to wit, on the 16th day of April, A. D. 1834, the following scire facias issued from the clerk's office of the court aforesaid, that is to say:

"UNITED STATES OF AMERICA,

District of Mississippi, ss.

THE UNITED STATES OF AMERICA,

To the marshal of the Mississippi district, greeting:

Whereas, N. Rogers and Sons, lately in our district court, for said district, brought their action against Abel H. Buckholts, in a plea of debt, and the said Abel H. Buckholts, the defendant in the action aforesaid, died before final judgment therein; and the court is informed that James M. Batchelor, Francis Wren, and Victoria C. Buckholts,are the administrators, &c. of said Abel H. Buckholts,deceased, and the said N. Rogers and Sons, have besought the court to grant them a remedy in that behalf, and the court being willing that what is right should be done in the premises: you are therefore hereby commanded, to make known to the said James M. Batchelor, Francis Wren, and Victoria C. Buckholts, administrators as aforesaid, that they be and appear before the judge of the distrit aforesaid, at a court to be held at the city of Natchez, on the 4th Monday of June next, to show cause, if any they can, why judgment in the action aforesaid, should not be awarded for the said N. Rogers & Sons against the said James M. Batchelor, Francis Wren, and Victoria C. Buckholts' administrators, as aforesaid, according to the form of the statute in such case made and provided; and further to do and receive what the said court shall then and there consider in this behalf.

And have you then and there this writ.

Witness the honorable Powhatan Ellis, judge of the district aforesaid, at the city of Natchez, the fourth Monday of January, A. D. 1834, and in the 58th year of the independence of the United States.

[L. S.] WM. BURNS,
Clerk.

Issued April 16, 1834.

Upon which said writ, the marshal of the district aforesaid, to whom the same was directed, by his deputy, made the following return, to wit:

"Made known to defendant, Victoria C. Buckholts, personally, and James M. Batchelor, by leaving a copy at his residence, June 12th, 1834, and also made known to Francis Wren, by copy, at his residence.

WM. M. GWIN,
Marshal.
By J. M. GWIN,
D. M."

Afterwards, to wit, at the January term of the court aforesaid, that is to say, on the fifth day of February, in the year of our Lord one thousand eight hundred and thirty-six, until which term this cause was regularly continued, came the *the* parties aforesaid, by their respective attorneys aforesaid, and the marshal of the district aforesaid, having summoned certain good and lawful men, according to the statute in such case made and provided, to be and appear before the judge of the district aforesaid, at the same term of the court last aforesaid, by whom, and so forth, and who neither, and so forth, to recognise, and so forth, because, and so forth, the same day is given to the parties then, and so forth.

At which said term of the court last aforesaid, the jurors of the jury, of which mention is above made, being called, certain of them came to wit: "Allen A. Johnson, James Fatherie, Martin Butner, Gideon Johnson, James Martin, Abner Miller, Daniel Yates, Selah Judd, William Robbins, Thomas Bozeman, John P. Wilson, David Talley;" who being empannelled, tried and sworn to speak the truth concerning the matters within contained, say upon their oath, "that the said A. H. Buckholts, in his life time, hath fully paid and satisfied the debt in the declaration mentioned, and all damages and interest as in pleading alleged, and they do certify that the plaintiffs are indebted to the defendants, administrators as aforesaid, the sum of eighteen hundred and twenty six dollars and seventy-four cents.

BILL OF EXCEPTIONS.

Be it remembered, that on the trial of this cause, the defendants set up an account of offsets, filed under their plea of payment, viz:

Dr. *Messrs. N. Rogers & Sons, in Acct. Current, and Interest*

1824.			
July 26.	To cash from Lambert & Bros.	$18 44	
	Int. on same, 5 y. 8 m. 5 d.	8 42	
			$26 96
Dec. 4.	To cash from do. - - -	66 49	
	Int. on same, 5 y. 3 m. 27 d. -	28 40	
			94 89
1825.			
Mar. 21.	To cash from do. - - -	187 27	
	Int. on same, 5 y. 0 m. 10 d. -	75 31	
			262 58
Sept. 4.	To cash from do. - - -	1,450 46	
	Int. on same, 4 y. 6 m. 26 d.	530 62	
			1,981 08
1827.			
Jan. 1.	To our acceptance your draft, payable *a* 6 m. - -	3,000 00	
	Int. 3 y. 3 m. - - - -	800 00	
			3,800 00
May 8.	To cash paid, costs of suit, vs. Wm. Eccles - - -	64 12	
	Int. 2 y. 10 m. 23 d. - -	14 91	
			79 03
Aug. 31.	To cash paid, fees on suit vs. D. Wood, for $2,700 *a* 5 pr. ct.	135 00	
	Int. 2 y. 7 m. 0 d. - -	27 90	
			162 90
			$1,936 78
	To balance due J. Richards & Co. brot down - - - - - - -		$1,541 16

1824.			
April 19.	By amt. John Richard's and A. H. Buckholts' note due this date - - - -	3,288 03	$
	Int. on same, 6 years - -	1,578 25	
			4,866 28
	By balance - - -		1,541 06
			$1,936 78

And introduced one Rowan, their witness, who testified that some time in the year 1830, he was requested by Buckholts to be present at a conversation, he expected to have at his office, with a Mr. Rogers, (a member of the firm of Rogers and Sons, as he understands,) relative to their accounts, and requested him to note down and recollect the conversation; that some time after Rogers came into the office, and a conversation ensued relative to their accounts; that the accounts before them were accounts made out by Rogers and Sons, between themselves and Richards and Buckholts, and John Richards & Co. and John Richards, and Lambert and Brothers, in account with John Richards & Co. Richards and Buckholts, and John Richards, and an account made out by Buckholts, between Richards and Buckholts, and Rogers and Sons; that in their conversation relative to those accounts Buckholts asked Rogers if the several items charged in his account had not been received, and Rogers admitted they had been; that among other items so admitted was the item charged in the account of offsets, filed under the plea of payment of $1,450 46, and the item of three thousand dollars.

Witness stated that in their conversation about the 1,450 46 dollar item, Rogers admitted that sum had been received by Rogers and Sons from Lambert & Brothers, in New York, and was part of the proceeds of seventy-four bales of cotton, shipped by Richards & Buckholts to Lambert & Brothers. That very little was said about the item of three thousand dollars; the witness recollected nothing more but an admission it had been received. That something was said between Buckholts and Rogers about the right to apply moneys to the payment of John Richard's private debts; Buckholts contending Rogers had no right to do so, and Rogers that he had; but which particular item of payment witness did not understand. This was all the evidence introduced by defendants in support of the above two items of 1,450 40, and three thousand dollars. The said witness further testified, that he had understood the said John Richards had once failed before he went into partnership with the said Buckholts. No other witness was introduced on the part of defendants. The defendants admitted that in the account made out by Buckholdts between Richards and Buckholts and Rogers and Sons, above mentioned, about which the said conversation between Buckholts and Rogers took place; that the item of three thousand dollors was charged by Buckholts in his said account, as an item received upon a bill of exchange drawn in 1825, by Rogers & Sons, on John Richards alone.

The plaintiffs then introduced the following letter from John Richards to Rogers & Sons, marked B.

"NATCHEZ, June 6th, 1825.

Messrs. A. Rogers & Sons:

Gentlemen: Your much esteemed favor of the 9th ultimo, is this moment received, and I hasten to reply to it. I know, and feel sensible that I have not done for my northern friends what I ought, but circumstances beyond my control have alone prevented. I feel truly

thankful for the very great indulgence that has been extended to me, without which I could not have gotten along. I now feel more confident than ever of, ere long, being able to pay every debt I owe. Had I been lucky this season I should have made much more money than would have paid every debt I owe, but it has turned out otherwise, which I regret, but cannot blame myself. The rise on the cotton market commenced when we had but little on hand, and for some time our purchases were limited, and as fast as we could realise a profit, we made sales. To-day we have amount sales of all the cotton we own, being sold, (except half interest on 78 bales gone to England, which was sold by Messrs. Lambert, in New York, at 20c. subject to benefit of half profits, without being accountable for any loss,) which, although bought lately, nearly netted 20 per cent. profit. It was sold to V. Natte & Co. for 30 cts. per pound. Our profits on cotton will be from 4 to $5,000, after paying for eighteen bales, we unfortunately had burnt; and our business is, I think, prospering. The following is about the payments we have left in the hands of Messrs. Lambert, Brothers & Co. to be divided between you and them.

Part sales 78 bales of cotton, about	$2,800 00
Foster and Steel's notes, due next winter, payable at the Bank St. Miss.	4,250 00
My three notes same time payable in New Orleans,	1,500 00
This intended on my own debts,	8,550 00
On account Richards & Co.	
The half profits on 78 bales cotton gone to England, which I hope may be	1,500 00
J. R. & Co. notes due next winter at New Orleans,	1,500 00
	$3,000 00

This day sent to New Orleans $654 55, to purchase exchange in New York, which will be forwarded as soon as received, to go to the payment of J. R. & Co's debt to you, and Messrs. Lambert, Brs. & Co. With these payments, I hope you will be satisfied until next winter. I have hopes of selling my private residence, at a sacrifice of $2,500, which shall be sent forward as soon as it is realized. I have a prospect of getting for it $9,000. The application to the bank has totally failed. I contemplate going to New Orleans to commence business, in November next, believing it will be beneficial to do so. As soon as I make a positive arrangement you shall be informed of it. I shall leave the establishment here in good hands. I shall be happy to hear from you.

Respectfully, yours truly,

JNO. RICHARDS.

I hope to see you all next summer. Have the goodness to make my respects to inquiring friends. Through an unfortunate mistake

of the clerk, we failed to get the judgment against Wood revived. It is truly unlucky.

I will thank you to show this to Messrs. L. B. & Co. I will enclose the dft. to them as soon as it is received.

Messrs. N. Rogers & Sons, New York."

After an argument of the cause on both sides, the plaintiffs by their attorney, requested the court to charge the jury, "first, that the defendants are not entitled upon the evidence before them, to the item of $1,450 40, as an offset to the plaintiff's claim." "Second, that the defendants are not entitled, upon the evidence befere the jury, to the item of three thousand dollars as an offsett. Which charge the court refused to give, and thereupon the defendants requested the court to charge as follows: "First, that if the jury believe the offset of $1,450 was the proceeds of cotton of Richards & Buckholts or John Richards & Co. shipped on their joint accounts, then it is a legal offset to a joint debt, and cannot be applied to the individual debt of John Richards, without proof that Buckholts was himself consulted and agreed to it. Second, that if the jury believed that the draft of three thousand dollars was paid by Richards & Buckholts or John Richards & Co. or out of the effects of either of those firms, with the knowledge of Rogers & Sons, then, in law, it is a legal offset to the joint debt of said Richards & Buckholts or John Richards & Co. and cannot be applied to the private debt of either partner, without the consent of the other partner. "Third, that the letter of John Richards, read in this case, is not evidence against Buckholts, unless the jury believe that Buckholts knew of the letter and sanctioned its contents, (which letter is the one before mentioned in this bill of exceptions.")

Which charge the court gave as requested.

To which decision, in refusing to charge as requested by the plaintiff, and in charging as requested by the defendants, the plaintiffs then and there excepted, before the jury retired from their boxes, and pray that their exceptions may be signed, sealed, allowed, and enrolled as part of the record of this cause.

POWHATAN ELLIS. [SEAL.]"

Whereupon, the said defendants, by their attorneys aforesaid, pray judgment against the said plaintiffs, upon the verdict aforesaid, by the jurors aforesaid, in form aforesaid rendered, and the plaintiffs aforesaid, by their attorneys aforesaid, say that the court here ought not to proceed to render judgment upon the verdict aforesaid, and pray that the verdict aforesaid, in form aforesaid given, be stayed, and that a new trial be granted unto them.

And hereupon, all and singular, the premises being seen, and by the court here fully understood, and mature deliberation being had thereupon, for that it appears to the court here, that the verdict aforesaid is in no wise erroneous. It is therefore ordered by the court that the motion aforesaid, for a new trial, be over ruled.

And hereupon, the said defendants, by their attoneys aforesaid, freely here in court remit to the said plaintiffs the sum of five hundred and sixty-six dollars and two cents, parcel of the debt aforesaid, by the jurors in form aforesaid, certified or assessed. Whereupon, the said plaintiffs are acquitted of the said sum in form aforesaid remitted, and may go thereof without day, and so forth.

Therefore, it is considered by the court now here, that the said James M. Batchelor, Francis Wren, and Victoria C. Buckholts, administrators as aforesaid, of Abel H. Buckholts deceased, recover against the said Nehemiah Rogers, Samuel Rogers, Edward N. Rogers, and George S. Rogers, and partners as aforesaid, under the style and firm of N. Rogers & Sons, the sum of one thousand two hundred and sixty dollars and seventy-two cents, the residue of the debt aforesaid, by the jurors aforesaid, in form aforesaid, certified or assessed, according to the form of the statute in such case made and provided, with interest thereon, at the rate of eight per centum per annum, from the said fifth day of February, in the year of our Lord one thousand eight hundred and thirty-six, until paid, and also the further sum of one hundred and ninety-one dollars and eighty-three cents and one third of a cent, by the court now here adjudged unto the said defendants, and with their assent, for their costs and charges by them sustained, about their defence in this behalf, and that the said defendants have thereof their execution, and so forth.

Afterwards, to wit, on the fourth day of April, A. D. 1837, the plaintiff, by George Winchester their attorney, filed the following petition, praying a writ of error to the judgment aforesaid, that is to say:

ROGERS & SONS
vs.
BUCKHOLTS' ADMINIST'RS.

District court of the United States for the district of Mississippi.

The petition of the plaintiff in the above case, respectfully represent, that in the record and proceedings of the above case, there is manifest error; in this, that the judgment is rendered in favor of the defendant, whereas it ought to have been for the plaintiffs. They therefore pray that the record of said cause may be removed by writ of error to the Supreme Court of the United States, upon plaintiffs executing bond with Stephen Duncan, their security, conditioned as the law directs, in an amount sufficient to secure the costs.

ROGERS & SONS,

By G. WINCHESTER,

Their attorney. "

Let a writ of error issue upon plaintiffs' executing a bond with Stephen Duncan, his security, conditioned as the law directs.

April 4, 1837.

GEO. ADAMS,
Judge U. S. D. Mississippi.

In pursuance whereof, a record of the judgment in the plea aforesaid, with all things thereunto relating, together with the writ of error annexed, is hereby transmitted to the said Supreme Court of the United States.

UNITED STATES OF AMERICA—*District of Mississippi, ss.*

I, William Burns, clerk of the district court of the United States for the Mississippi district, do hereby certify that the foregoing twenty-five pages contain a true, perfect, and complete transcript, of the record and proceedings in a certain action of debt, lately determined in said court between the parties therein named, as fully and completely as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, the first day of August, A. D. 1837, and in the sixty-second year of the independence of the United States of America.

[SEAL.] WM. BURNS,
Clerk of the district of Mississippi.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the judge of the district court of the United States for the district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea, which is in the said district court, before you, between Nehemiah Rogers, Samuel Rogers, Edward N. Rogers, and George S. Rogers, partners in trade, under the style and firm of N. Rogers and Sons, plaintiffs, and James M. Batchelor, Francis Wren, and Victoria C. Buckholts, administrators, &c. of Abel H Buckholts, deceased, defendants, a manifest error hath happened to the great damage of the said Nehemiah Rogers, Samuel Rogers, Edward N. Rogers, and George S. Rogers, partners as aforesaid, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-

preme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Su preme Court of the United States, the second Monday of January, of the year of our Lord one thonsand eight hundred and thirty.seven, and of the independence of the United States the sixty-first.

[SEAL.] WM. BURNS,
Clerk of the district court, Mississippi district.

UNITED STATES OF AMERICA—*District of Mississippiss, ss.*

To James M. Batchelor, Henry Street, and Victoria C. Street his wife, formerly Victoria C. Buckholts, administrator and administratrix of Abel H. Buckholts, deceased, greeting:

You are hereby cited and admonished, to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the district of Mississippi, wherein Nehemiah Rogers, Samuel Rogers, Edward N. Rogers, and George S. Rogers, trading under the name and style of N. Rogers and Sons, is plaintiff, and yourselves are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected,and speedy justice should not be done to the parties in that behalf.

Witness the honorable George Adams, judge of the United States district court, for the district of Mississippi, this 4th day of April, A. D. 1837.

GEO. ADAMS.

I, Hamilton McKnight, deputy sheriff for Charles W. McKnight, sheriff of Amite county, do certify that copies of the within citation has been duly served on Henry G. Street, and Victoria C. Street, administrator and administratrix of A. H. Buckholts, deceased. On the 15th July, 1837.

Given under my hand this 15th day of July, 1837.

C. W. McKNIGHT.
Sheriff.
Per. HAMN. McKNIGHT,
D. Sheriff.

I hereby acknowledge service of the within named defendants, as their attorney and counsel, in the within named case.

J. T. McMURRAN,
Attorney.

August 17, 1887.